THE LAW

OF

Joint Stock Companies' Accounts,

AND

THE LEGAL REGULATIONS

FOR

THEIR ADJUSTMENT IN PROCEEDINGS AT COMMON LAW, IN EQUITY AND BANKRUPTCY,

AND UNDER

THE WINDING-UP ACTS OF 1848 AND 1849,

INTENDED AS AN ACCOMPANIMENT

TO THE

"LAW OF MERCANTILE ACCOUNTS."

BY

ALEXANDER PULLING, ESQ.,

OF THE INNER TEMPLE, BARRISTER AT LAW.

LONDON:

HENRY BUTTERWORTH, 7, FLEET STREET,

Law Bookseller and Publisher.

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PRINTED BY C. ROWORTH AND SONS, BELL YARD,
TEMPLE BAR.

TO

WILLIAM CRAWSHAY, ESQ.

OF CYFARTHFA CASTLE, IN THE COUNTY OF GLAMORGAN,
AND CAVERSHAM PARK, IN THE COUNTY OF OXON,
&c. &c.

My dear Sir,

I have dedicated these pages to you, less influenced by motives derived from family ties, personal obligations, and personal esteem, than by a conviction that, in selecting your name to head a disquisition on Joint Stock Companies' Accounts, I fix on one which is, in a very remarkable way, honourably identified with my immediate subject; for in your own person the name of *Crawshay*,—associated during many generations with great private enterprises, conducive to our commercial prosperity, and affording daily sustenance to thousands,—now calls to

mind all that partakes of energy, spirit, and high-minded integrity in the conduct of the great Joint Stock undertakings of the present day, contrasting in a very strong degree with the *jobbing*, the recklessness, trickery and fraud, that the very term "*railway accounts*" has recently been considered to import.

Occasional recourse to the rules of law, here attempted to be described, may be necessary to prevent or to cure disorders, even in the best of these associations, just as an occasional course of medicine is necessary for the most healthy system; but that their good constitutions may hereafter secure to them, and your own good constitution preserve to you, a long, prosperous, and happy life, is the hearty wish of,

My dear Sir,

Yours very sincerely,

ALEXANDER PULLING.

6, CROWN OFFICE ROW, TEMPLE,
1st *December*, 1849.

PREFACE.

In this accompaniment to the *Compendium of the Law and Usage of Mercantile Accounts*, as in the original work, I have endeavoured to collect the whole of the rules of law applicable to my subject, and to expound them in as concise a manner as possible, but at the same time to expound them accurately.

The saying of Dr. Johnson about the difficulty of writing a short letter peculiarly applies to the case of a small law book. If it is not a mere abridgment of what others have written, or a mere compilation of marginal notes, a small book on any leading branch of law takes infinitely more time to write than a large one. I do not therefore hesitate to state, that the Compendium of the Law of Accounts, as well as this little accompaniment, have cost me considerable time and trouble. Whether the result is worthy of the cost, it is not for me to decide.

In this *accompaniment* I have endeavoured to follow the design of the original work, and I have therefore divided my subject into Three Parts,

treating, 1. Of the General Rules of Law applicable to Joint Stock Companies' Accounts; 2. Of the legal Regulations for keeping and auditing them; and lastly, Of the various Modes of legally investigating them.

For the general mode in which the details of the subject are arranged, I must refer to the table of contents, but as the most recent provision of the legislature with regard to Railway Companies' Accounts, I must mention "the Winding-up Acts," which will be found here very fully commented on, the principal clauses being given in full, the mere formal sections being only omitted, from a friendly regard both for the reader's patience as well as his pocket.

I hope this little attempt to reduce into so small a compass the whole law of Joint Stock Companies' Accounts will be found of use, not only to lawyers, but to those whom the proper management of Railway Accounts more directly concerns. If, as must always happen in a legal treatise, this book has its imperfections, it has also the advantage of containing some legal truths, which, if attended to two years ago, would have protected a large portion of the community from great pecuniary losses and personal injustice.

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ACTS OF PARLIAMENT.

INTRODUCTION.

In the *Compendium of the Law of Mercantile Accounts*, to which this is intended as an accompaniment, are pointed out the various rules of law and modes of proceeding applicable to Debtor and Creditor Accounts, both in ordinary cases and in those of Agencies, Partnerships, &c., and in the event of Bankruptcy or Insolvency.

It is here proposed to treat of the legal regulations applicable to the case of *Joint Stock Companies' Accounts*, a subject at present of peculiar importance, considering the host of questions which this class of accounts necessarily gives rise to, the vast amount of property affected by them, the multitude of individuals whose interests they involve, and the erroneous notions which appear to prevail on the subject.

The legislature has as yet interfered only to lay down very general regulations as to the mode of auditing the accounts of public companies (*a*).

(*a*) See the provisions of the 7 & 8 Vict. c. 110, s. 38, &c. and the 8 Vict. c. 16, s. 115, &c. *post*, pp. 28—35, as to the mode of keeping and auditing companies' accounts.

But some important statutes which will be found treated of in these pages minutely regulate the mode of winding up the accounts of unsuccessful undertakings (*b*); and plans have already been submitted to the legislature for establishing a more perfect system of audit in the case of Railway Companies' Accounts, and it is probable, ere long, that some improved system will receive the sanction of parliament (*c*).

Most of the rules of law which have been already discussed in reference to mercantile accounts apply also with respect to the class of accounts we are now speaking of. The accounts of Joint Stock Companies, like those of ordinary partnerships, have, of course, a twofold operation; 1st, as between the association and third parties, and 2ndly, with respect to the members of the association *inter se* (*d*); but, as we shall presently find, the legislature has, in the case of Joint Stock Companies, prescribed a very different mode of adjusting the individual rights and liabilities of

(*b*) 11 & 12 Vict. c. 45; and 12 & 13 Vict. c. 108, *post*, ch. 3.

(*c*) See 1st, 2nd, and 3rd Reports (1849) of Select Committee of House of Lords, appointed to consider "whether the Railway Acts do not require amendment, with a view of providing for a more effectual audit of accounts, to guard against the application of the funds of such companies to purposes for which they were not subscribed under the authority of the legislature." The disclosures in these *Blue Books* are of a very curious nature, displaying at once the inconsistency and carelessness of the monied crowd, and the very, very small number who can at any period be advantageously entrusted with *untold gold*. It is impossible, without a feeling of *nausea*, to contemplate such unbounded confidence reposed in mere *reputed wealth* and station, whilst high personal character, talent and worth are often so cruelly mistrusted in money transactions.

(*d*) See Compendium, p. 42.

the members with respect both to third parties and to each other from that which prevails in the case of ordinary partnerships.

It will be useful to bear in mind that independent of the very recent provisions of the legislature no trading company or association was legally recognised in this country as anything else but an ordinary partnership unless it had received a complete charter of incorporation.

Corporations are, by the rules of the common law of England, deemed a sort of *artificial person*, in which the individual rights and liabilities of the members with respect to strangers are deemed altogether to merge (*e*), and all dealings and transactions between such associations and third parties are therefore governed by the same rules as if they took place between two private individuals. Such an association, to use the language of a very accurate legal writer, is "a collection of many individuals united into one body, under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued; of enjoying privileges and immunities in common, and of exercising a variety of political rights more or less extensive, according to the design of its institution or the powers

(*e*) Co. Litt. 129 a; 1 Bl. Com. 470, 471.

conferred upon it either at the time of its creation or at any subsequent period of its existence." (*f*)

As very few instances present themselves of trading speculations and accounts connected with corporations existing merely by the rules of the common law, independent of the operation of the express provisions established by the legislature (*g*), it may suffice in this place to say, that theoretically and practically the accounts relating to the transactions in which such corporations are engaged are governed by the same rules as transactions between private individuals; and indeed the mode of proceeding to adjust such accounts during the continuance and the solvency of a corporation little differ from those adopted in ordinary cases (*h*).

Corporations are deemed by the doctrine of our common law to contract by their authorized agents, or by affixing the common seal; and those who deal with a corporation can look only to the funds of the corporation for a fulfilment of such contracts, and a debtor and creditor account between the corporation and a party dealing with it is not only distinct from any account with particular

(*f*) Kyd's Law of Corporations, Introd. p. 13. Some of our older law books raise corporations to the rank of *immortality*; see 10 Coke's Reports, 32 b, and the authorities there cited; but these were written ages before stock-jobbing was in vogue.

(*g*) St. Charles Bank *v.* De Bernales, R. & M. 190.

(*h*) The authorized agent or officer of a corporation proves under a bankruptcy like an individual creditor; see Ex parte Bank of England, 1 Swanst. 10; and statutes 12 & 13 Vict. c. 106, s. 164; 7 Geo. 4, c. 46, s. 9; and he may make the affidavit in support of the *fiat*. Ex parte Collins, Re Rickett, 1 De Gex, Bank. Cas. 381.

members but is also prevented being enforced even against the whole body of members individually.

At common law, indeed, the rights and liabilities of a corporation become *extinguished* by its dissolution; and the debts due to or from the corporation cannot, therefore, except by the express provisions of the statute law, be recovered by or from the individual members in their private capacity. (*i*)

The tendency of modern commercial enterprise having much served to give rise to extensive joint stock undertakings, in which, by the comparatively small contributions of the individual members or shareholders, large capitals have been embarked in the carrying out very extensive enterprises, the legislature has introduced certain positive regulations with a view to the protection and encouragement of legitimate enterprise, and the suppression of mere scheming and fraud, thus modifying the rigid common law doctrines applicable both to the irresponsibility of incorporated associations, and the unlimited liability of mere partnerships (*j*).

Previous to these statutes, such undertakings were for the most part regarded as *bubbles*, which it was the object of the law to suppress (*k*).

The classes of associations or companies now

(*i*) See Bacon's Abr. Corporation, E. 5, and cases there cited; Edmunds *v.* Brown, Lev. 237 (Case of Company of Woodmongers,) see Bishop of Rochester's case, Owen, 73.

(*j*) Rex *v.* Webb, 14 East, 406.

(*k*) See Josephs *v* Pebrer, 3 B. & C. 639; Blundell *v.* Winsor, 8 Sim. R. 601; Walburn *v.* Ingilby, 1 Myln. & K. 61, 76; and see Harvey *v.* Gillett, 15 Law Journ. Ch. 376.

recognized by law, in addition to mere corporations and private partnerships, may be divided thus:—

1. Registered Joint Stock Trading Companies, coming within the provisions of the 7 & 8 Vict. c. 110.
2. Mining Companies, governed by the laws of the stannaries.
3. Banking Companies, empowered to sue and be sued by their public officer (*l*).
4. Companies regulated by express private statute, such as those for the formation of railways, canals, &c. (*m*).

The accounts which arise out of the various transactions of these associations are, by the express provisions of the legislature, subject to particular regulations, not only with respect to the rights and liabilities of the shareholders, and the debtors and creditors of the associations, but also with respect to the mode of keeping and auditing their accounts, and the practical proceedings for their investigation; and in order to follow as near as possible the course already adopted in treating of mercantile accounts (*n*), the whole of the present subject will be arranged under three heads, viz.—

(*l*) 7 Geo. 4, c. 46.

(*m*) The legislature has also from time to time sanctioned the establishment of certain classes of associations under the names of *friendly societies, building societies, savings banks, &c.*, which not partaking of a commercial character do not come within the design of the present work.

(*n*) See Compendium, &c., Introduction, p. 4.

1. The general rules of law relating to joint stock companies' accounts;
2. The legal regulations for keeping and auditing such accounts; and
3. The various modes of legally investigating them.

CHAPTER I.

OF THE GENERAL RULES OF LAW RELATING TO JOINT STOCK COMPANIES' ACCOUNTS.

THE general rules of law applicable to the relations of debtor and creditor, principal and agent, and the accounts which those relations give rise to (*a*), of course equally apply to the accounts of Joint Stock Companies.

The debts due to or owing from a company on account of simple contract transactions, and such as are not secured by lien or mortgage, come under the same rules as to interest, payment, tender, set-off, &c., as prevail in ordinary cases, and the equitable rights of each shareholder to call upon the acting members to render the accounts of the undertaking, and to adjust the profits and losses rateably amongst the general body, equally prevail in these cases as in ordinary partnerships (*b*); but in the case of Joint Stock Companies' accounts there are also certain *peculiar* rules and doctrines of law which it is proposed to treat of in this chapter. The peculiar legal features, that the debtor and creditor account between a Joint Stock Company and a party *not being a member* present, will be pointed out in the first section of the present chapter, and the second

(*a*) See Compendium, &c., chap. 1, sects. 1 and 2.
(*b*) See *post*, chap. 3, sect. 2.

section will treat of the law relating to these accounts as respects the shareholders *inter se.*

Section I.

Of Debtor and Creditor Accounts between Joint Stock Companies and Strangers.

The accounts between a Joint Stock Company and its several debtors and creditors are, as already observed, neither necessarily complicated or productive of any peculiar questions of law. Under ordinary circumstances each debtor and creditor is presumed to contract alone with the artificial person legally recognized in *the company*, and primâ facie, therefore, it is with the company alone, and not any mere individual shareholder, that such accounts must be adjusted (*c*), whether the

(*c*) See Steward *v.* Greaves, 10 M. & W. 711, where it was held that the creditor of a banking company, existing under 7 Geo. 4, c. 46, could not sue the individual shareholders, but the *public officers* only; see also Blewitt *v.* Gordon, 1 Dowl. N. S. 815; and see Meglioruccbi *v.* Royal Exchange Assurance Company, 1 Eq. Ca. Abr. 9, where it was held that the directors or trustees of a public company, incorporated by act of parliament, cannot set off a debt due to them from a bankrupt for a loan of money before his bankruptcy, against a demand made upon them by the assignees for the amount of the stock held by the bankrupt, the loan not being made on the credit of the stock; though of course there may be a special agreement to that effect, Nelson *v.* London Assurance Company, 2 Man. & S. 292; or a bye-law, Gibson *v.* Hudson's Bay Company, 1 Str. 645; or provision in the deed of settlement, Hague *v.* Dandeson, 2 Exch. Rep. 741; 17 Law Journ. 269, Exch. See operation of 1 & 2 Vict. c. 96, s. 4, as to debtor and creditor accounts of shareholders in Joint Stock Banks, Ex parte Wood, 1 Mont. D. & D. 92; and see Ex parte Hall, Mont. & Ch. 365.

In the case of a company existing merely by private act, it would seem that provisions must be clear, in order to exempt shareholders from being directly sued; see Beech *v.* Eyre, 6 Scott, N. R. 327.

adjustment be carried out by payment, set-off, &c., or by composition. But it must be remembered that there are also debtor and creditor accounts arising from the very process of forming a Joint Stock Company, and that there are many accounts which often remain unsettled at the time of a company's failure or dissolution. Moreover the powers conferred on a company to borrow money, and the mode in which that money is to be repaid, are generally settled by positive law. In each of these instances, of course, the accounts of a Joint Stock Company present peculiar features, varying from those which legally arise from the ordinary relation of debtor and creditor.

Preliminary Accounts.—Previous to the complete formation of a Joint Stock Company, it is the individual promoters or projectors only with whom all accounts respecting it arise, and with whom alone they must be adjusted, and it appears now to be fully settled that the promoters are not legally to be regarded in the nature of *partners* (and thus confiding unlimited credit in each other), but that this liability in each separate instance is to be inferred from their individual acts and conduct (*d*).

The promoters however of such schemes are so far identified in the undertaking, and the accounts

(*d*) See Wyld *v.* Hopkins, and Reynell *v.* Lewis, 15 M. & W. 517; see also Lake *v.* Duke of Argyle, 6 Q. B. Rep. 477; Wood *v.* Same, 6 M. & G. 928; Williams *v.* Pigott, 17 Law Journ. Exch. 198.

between them so far resemble partnership accounts (*e*), that an action at law will not lie at the suit of one member against the other members on account of money or labour expended *on the undertaking* (*f*).

The law seems to afford greater facilities for enforcing a settlement of accounts against an association of this kind than those which arise in

(*e*) See Compendium, p. 44, and *post*, p. 14.

(*f*) Holmes *v* Higgins, 1 B. & C. 74; 2 Dowl. & R. 196. In this respect the Roman law and the law of France, and the law of Scotland present a marked contrast to the common law of England. In the jurisprudence of those countries the *firm* of an ordinary partnership is treated in its aggregate capacity as having an independent existence, somewhat like a quasi corporation; and the firm may, therefore, sue and be sued by a single partner without any repugnancy, exactly as a member of a corporation may sue and be sued by the corporation itself. In this respect there is an analogy to the proceedings of our Courts of Equity, where one partner is entitled to sue all the other partners for an adjustment of the partnership concerns, or for any transaction growing out of the same concern. Storey on Partnership, s. 221, note (1); see also Bell's Commentaries on the Law of Scotland, (b. 7, p. 619, 620, 5th ed.)

One member of a preliminary association such as we are speaking of may, in the same manner as happens in ordinary partnerships, place himself, by the advance of money on express personal security of the other members, in a situation to recover the amount by action, whether it be applied to the private purposes of the borrower or in the promotion of the undertaking; Colley *v*. Smith, 2 Moo. & Rob. 96; Fox *v*. Frith, 10 M. & W. 131; Lanyon *v*. Davey, 11 M. & W. 222; and in a simple case of a specific pecuniary advance by one member on behalf of himself and another, not involving matters of debtor and creditor account, the amount may be recovered by an action for contribution; see Edgar *v*. Knapp, 5 M. & G. 753; and claims on an association by one member arising before he joined it may be enforced against all; Lucas *v*. Beach, 1 Man. & Gran. 417; but unless it be clearly shown that the claim of one member of such an association against the others arise in their *individual capacity* and not as representing the association, no action at law will lie to enforce it; Wilson *v*. Lord Curzon, 11 Jurist, 47; see Goddard *v*. Hodges, 1 C. & Mee. 33, where the rule was applied to the case of one member merely holding shares in the name of another person, who was himself the ostensible holder, see 11 Jur. 47.

its favour. Thus a creditor of a preliminary scheme has, it would appear, the option of suing the promoters individually or collectively (*g*), but a debtor must be sued by the whole body (*h*), any individual of whom may give him a release (*i*).

In this preliminary state of a joint stock undertaking it is further to be observed, that, in a legal point of view, the accounts necessarily vary at each retirement of a member of the *provisional committee* or acting body, or the accession of a new member, no individual member being primâ facie liable for debts incurred previous to his joining (*k*). *After the establishment* of a company, all debts for the expenses incurred in the formation are generally made a charge upon the funds of the company, whether raised by subscriptions of the shareholders, or by loan or otherwise, and all accounts in respect thereof may then of course be transferred from the individual projectors to the company, and a settlement be required from the latter (*l*).

(*g*) See Henry *v.* Goldney, 15 M. & W. 494; 4 D. & L. 6; 15 Law Jour. (N. S.) Exch. 298; Giles *v.* Tooth, 16 Law Jour. C. P. 3; Newton *v.* Belcher, *ib.* Q. B. 37.

(*h*) 1 Saunders, 291, n. (*n*).

(*i*) See Rawstorne *v.* Gandell, 15 M. & W. 304; 4 Ry. Cases, 295; a *set-off* against an individual member could not legally be pleaded to an action against a debtor to the whole body; see Compendium, p. 25; but this power of individual members to give a release would, it is obvious, generally render a plea of set-off in such cases unnecessary, if the particular member concur.

(*k*) Barnett *v.* Lambert, 15 M. & W. 489; Beale *v.* Mouls, 10 Q. B. Rep. 976.

(*l*) 8 Vict. c. 16, s. 65; see Tilson *v.* Warwick Gas Light Company, 4 B. & C. 962; Carden *v.* General Cemetery Company, 5 Bing. N. C. 253; see Londonderry Railway Company *v.* Macneil, 11 Law Times, 436, (Ch. Ireland). In actions brought for the

Debts and Credits subsequent to Formation of Company. — A Joint Stock Company completely formed, it has been already observed, has most of the incidents of a corporation or artificial person; and the debtor and creditor accounts, which *arise in the ordinary course of the undertaking*, by means of the current expenditure and ordinary revenue or proceeds, are in each case with the company, and not with the individuals who compose it. These latter cannot legally sue or be, in the first instance (*m*), sued in respect of them in their private capacity, and are liable only indirectly on the company's default. It is with the public officer, the secretary, or whoever else it is that is empowered to represent the company (*n*), that the accounts in the first instance arise, and should consequently be adjusted; provided of course that the transaction is within the scope and authority of such representatives of the company (*o*); for the constitution of different companies materially varies on this point (*p*).

The rule already alluded to, which prevents, without a specific agreement, one member of a firm from suing the others at law for money or ser-

amount of a surveyor's bill, &c. the courts of common law will not compel a delivery of the particulars of the items of charge and expenditure, if general information is afforded; see Rennie *v.* Beresford, and Higgins *v.* Ede, 15 M. & W. 76.

(*m*) Steward *v.* Greaves, 10 M. & W. 711, and *ante*, p. 9.

(*n*) E. *g.* two or more of the directors, see Taylor *v.* Clemson, 8 Cl. & F. 610; 3 Ry. Ca. 85; see also Ridley *v.* Plymouth Baking Company, 17 Law Jour. (N. S.) Exch. 252; 2 Exch. Rep. 711.

(*o*) Ridley *v.* Plymouth Grinding Company, *ub. sup.*

(*p*) See Steele *v.* Harmer, 14 M. & W. 831; 15 Law Jour. Exch. 217, where it was held that the directors of a cemetery company had

vices expended for the use of the partnership (*q*), in a great degree operates in the case of Joint Stock Companies completely formed, which are neither actually incorporated or regulated by act of parliament (*r*). Thus, if a shareholder in a mining company, supply goods, &c. to the company, and draw a bill for the amount on the secretary, he cannot recover the amount by action (*s*).

In the instance indeed of the directors of a Joint Stock Company, the law wisely prohibits them from being contractors or interested in any contract with the company during the time they are directors (*t*).

In cases of purchases of land, the purchase money is, for the most part, positively required to be paid over before possession is taken (*u*), and of course no debt arises; but when, as in the cases of patents sold to a company, the purchase money is by special agreement made a charge upon the stock and funds of the association, a different rule necessarily prevails, and the nature

no power to accept a bill of exchange, though invested by express statute with very extensive powers as to contracts, &c.; and see Brown *v.* Byers, 16 Law Jour. Exch. 112; see also Thompson *v.* Universal Salvage Company, 17 Law Jour. Exch. 118.

(*q*) *Ante*, p. 11, note (*f*), and Compendium, &c. p. 44.

(*r*) As to which see 7 & 8 Vict. c. 113, s. 8, relating to shareholders in banking companies; and *ante*, note (*c*), as to shareholders in registered companies, &c.

(*s*) Teague *v.* Hubbard, 8 B. & C. 345; 2 M. & R. 369; see Neale *v.* Turton, 4 Bingh. 149; 12 Moore, 365.

(*t*) 8 Vict. c. 16, c. 85; see Sheffield, &c. Railway Company *v.* Woodcock, 7 M. & W. 574; 2 Ry. Ca. 522.

(*u*) See as to this Lindsay *v.* Capper, 1 Exch. Rep. 379.

of the claim wholly depends upon the language of the special agreement (*x*).

Leasing Railways, &c.—It is needless to remark that arrangements between two companies as to the leasing their undertakings from one to another, and the accounts which arise therefrom, are dependent entirely upon the express provisions of their acts of parliament (*y*).

Creditors by Debenture, Guarantee, &c.—Joint Stock Companies are usually compelled, in order to successfully carry out their extensive undertakings, to raise capital by mortgage of their funds and stock; and by a very recent system adopted amongst railway companies, &c. a fixed dividend is, in consideration of certain concessions made by one company, often guaranteed to it by another; and (almost as if for the purpose of setting the simpler rules of debtor and creditor at defiance) certain of the members of a company are constituted, under the term *preference shareholders*, creditors for the amount of their dividends as against the company itself, on the funds applicable to such purposes before any distribution can be made among the general body of shareholders.

(*x*) See Pilbrow *v.* Atmospheric Co., 17 Law Jour. C. P. 166; 5 Ry. Cases, 89; see instances of effect of special agreement between directors of a railway company and a landowner, Lindsay *v.* Capper, 1 Exch. Rep. 379.

(*y*) See 8 & 9 Vict. c. 96; on the subject of leasing railways, see Report of Railway Department of Board of Trade, 7 May, 1845; Report of House of Commons, 1846; Second Report, 4 May, 1846, Select Committee on Railway Acts.

It may be unnecessary to state, that arrangements of this latter description cannot legally be effected without the express sanction of the legislature (*z*); though bonâ fide contracts to obtain such sanction will generally be upheld in equity (*a*), and the authority even to borrow money on debentures is generally regulated by express statute (*b*); non-compliance with which invalidates the transaction (*c*); and indeed the remedy afforded to the creditor is, in a great degree, governed also by the terms of the act of parliament (*d*), and the form of the security which is taken. In the case of a mere mortgage or charge upon the company's land, without any *covenant* to pay (*e*), it would seem only six years' arrears of

(*z*) Natusch *v.* Irving, Gow on Partnership, Appendix, 404; Ward *v.* Society of Attornies, 1 Coll. 370; Ware *v.* Grand Junction Waterworks, 2 Russ. & Myl. 470; *S. C.* 9 Law Journ. (N.S.), Ch. 169.

(*a*) See Edwards *v.* Grand Junction Railway Company, 1 Myl. & C. R. 650; Great Western Railway Company *v.* Birmingham and Oxford Railway Company, 2 Phillips, 597; 17 Law Journ. (N. S.), Ch. 243.

(*b*) See 8 Vict. c. 16, ss. 38, 39, and forms, Schedules C. and D.; and see Orders H. C. 96, H. L. 233, sec. 4, part 1.

(*c*) See Hill *v.* Salford and Manchester Waterworks Company, 5 B. & Ad. 874; Hill *v.* Same, 2 B. & Ad. 874; Clarke *v.* Imperial Gas Company, 4 B. & Ad. 313; West Cornwall Railway Company *v.* Mowatt, 17 Law Journ. (N. S.), Ch. 366; Lewis *v.* Cooper, 10 Jur. 602; Gilbert *v.* Cooper, 10 Jur. 580.

(*d*) Id. ib; see Duncan *v.* Manchester Waterworks Company, 8 Price, 697; see Pontet *v.* Basingstoke Canal Company, 2 Bingh. N. C. 370, where a creditor by bond was held entitled to inspect the books of a railway company. This is now provided for by 8 Vict. c. 16, s. 55; see also Parkins *v.* Deptford Pier Company, 3 Railway Cases, 95; 13 Simons, 277; Doe *d.* Myatt *v.* St. Helen's and Runcorn Extension Railway Company, 2 Railway Cas. 756; 1 G. & D 663; 2 Queen's Bench Rep. 264.

(*e*) The course of proceeding by Joint Stock Companies in raising money by mortgage is thus described in a very useful practical

interest can be legally recovered at any one period (*f*); but ample remedies are afforded for obtaining payment out of the funds and tolls of the undertaking, by the Companies Clauses Act (*g*). In the case of bond creditors, even twenty years' arrears of interest may be recovered with the amount of the principal (*h*); and the creditor has of course the option of suing the company and obtaining judgment, which entitles him to execution against such of the shareholders as have not completely paid up the amount of their shares (*i*); but at the expiration of twelve months from the date of a bond, companies have the power to serve notice of repayment, and thus get released from subsequent interest (*k*).

book on Railway Law, "where a company propose to raise money by mortgage, they prepare a mortgage deed, whereby they assign over the undertaking, and all the tolls and sums of money arising by virtue of the special act, and all the estate, right, title and interest of the company in the same to the mortgagee and his personal representatives, as a security for the repayment of the money advanced and interest on the day named in the deed; or if no time be fixed, then at the expiration of twelve months after the date of the deed, or at any time subsequently, on six months' notice by either party for that purpose. If the loan be made in anticipation of the capital authorized to be raised, all future calls on the shareholders are included in the assignment. This instrument must be under the seal of the company, and must be duly stamped." Chambers and Peterson on Railway Companies Law, p. 509.

(*f*) 3 & 4 Will. 4, c. 27, s. 42; Hodges *v.* Croydon Railway Company, 3 Beav. 86; and see Mellish *v.* Brooks, *ib.* 22, where the mortgage deed fixes a period for repayment, the company will be liable for subsequent interest, unless they actually tender the amount due; Price *v.* Great Western Railway Company, 16 Law Journ. (N. S.), Exch. 87.

(g) See 8 Vict. c. 16, ss. 53, 54.

(*h*) 3 & 4 Will. 4, c. 42, s. 3.

(*i*) *Ib.* s. 36.

(*k*) *Ib.* s. 52.

Loan Notes.—The practice of borrowing money in a manner unauthorized by act of parliament, as by loan notes, &c., is now prohibited (*l*); and indeed it is questionable whether borrowing money

(*l*) 7 & 8 Vict. c. 85, ss. 19, 20, 21. "And whereas many railway companies have borrowed money in a manner unauthorized by their acts of incorporation, and other acts of parliament relating to the said companies, upon the security of loan notes, or other instruments purporting to give a security for the repayment of the principal sums borrowed at certain dates, and for the payment of interest thereon in the meantime, and whereas such loan notes or other securities, issued otherwise than under the provision of some act or acts of parliament, have no legal validity; and it is expedient that the issue of such illegal securities should be stopped, but such loan notes or other securities have been issued and received in good faith, as between the borrower and lender, and for the most part for the lawful purposes of the undertaking, and in ignorance of their legal invalidity, it is expedient to confirm such as have been already issued: be it enacted, that from and after the passing of this act, any railway company issuing any loan note or other negociable or assignable instrument purporting to bind the company, as a legal security for money advanced to the said railway company otherwise than under the provisions of some act or acts of parliament authorizing the said railway company to raise such money and to issue such security, shall for every such offence forfeit to her majesty a sum equal to the sum which such loan note or other instrument purports to be such security, providing always that any company may renew any such loan note or other instrument issued by them prior to the passing of this act for any period or periods not exceeding five years from the passing of this act."

"That where any railway company, before the twelfth day of July, one thousand eight hundred and forty four, shall have issued or contracted to issue any such loan notes or other unauthorized instruments, the company may and shall pay off such loan notes or other instruments as the same may fall due, subject as hereinbefore provided, and until the same shall be so paid off the said loan notes or other instruments shall entitle the holders thereof to the payment by the company of the principal sum and interest thereby agreed to be paid."

"That a register of all such loan notes or other instruments shall be kept by the secretary, and such register shall be open without fee or reward, at all reasonable times, to the inspection of any shareholder or auditor for the undertaking, and of every person interested in any such loan note or other instrument, desirous of inspecting the same."

by a corporation, without the security of their common seal, is in any case legal at common law(*m*).

The 7 & 8 Vict. c. 85, contains express regulations on the subject of loan notes issued previous to that act(*n*).

In default of payment or settlement of a debt by a Joint Stock Company, the creditor may enforce payment from the individual shareholders either by issuing execution after judgment obtained against the company (*o*), or by any of the modes of proceeding which will be pointed out in the third chapter of this work.

Section II.

Of Accounts of Joint Stock Companies as regards the Members inter se.

The class of accounts treated of in the last section were those which arise from the relation of debtor and creditor as between Joint Stock Associations (or their individual members,) and third

(*m*) See Mayor of Ludlow *v.* Charlton, 6 M. & W. 815; *sed vide* Campbell *v.* London and Brighton Railway Company, 5 Hare, 519; 11 Jur. 651, Ch.

(*n*) See note (*l*), *supra*.

(*o*) See 7 & 8 Vict. c. 110, s. 66; 7 Geo. 4, c. 46, s. 5; 8 Vict. c. 16, s. 36, 52, 53; see Turner *v.* Metropolitan Live Stock Company, 2 Exch. 567; Scott *v.* Berkeley, 3 Com. Bench, 925; Ricketts *v.* Mowbray, *ib.* 889; see Story, p. 540.

parties; we have now to speak of the general rules of law which regulate the accounts of the members or shareholders *inter se*.

A Joint Stock Company completely registered (*p*), or otherwise legally formed (*q*), has for the most part the incidents of a corporation, the members of which are legally deemed as distinct from the corporate body as any third person (*r*), but the law of England, which always assumes to give a remedy for the prevention of injustice, recognizes, as we shall see in a future page (*s*), a variety of modes in which the acting or managing members of such companies can be called to account by the general body of shareholders.

It is an obligation and duty devolving at common law upon every acting member of a partnership or association to keep precise accounts of all his own transactions for the association, and to have them ready for inspection and explanation, so that each of the members may be enabled to see that it is carrying on for their mutual advantage, and not injuriously to the common interest (*t*). This duty equally prevails in the case of ordinary corporations (*u*), and in the class of associations which we are now considering, though the active management of the affairs of Joint Stock

(*p*) 7 & 8 Vict. c. 110, s. 7.
(*q*) See *ante*, p. 6.
(*r*) See per Parke, J. in Dunston *v.* Imperial Gas Co., 3 B. & Ad. 132.
(*s*) See ch. 3.
(*t*) See chapter on partnership accounts in *Summary*, p. 43.
(*u*) See *post*, ch. 3.

Companies is usually entrusted to particular individuals selected from the general body of members, under the name of *directors, governors, committeemen, managers,* &c. whose duties with regard to accounts are in a great degree defined by express regulations (*x*).

It must be remarked however, that, independent of any such express regulation, each acting member is under a legal obligation to bring into account and cause to be entered in the books of the association every transaction which he has in any manner been engaged in on behalf of the association, whether it be the receipt of monies, or anything else of value; and that the omission to do this is a species of fraud against the association (*y*). It would be an obvious fraud on the part of an acting member to make a purchase on behalf of the association, and either to omit to account for it (*z*), or

(*x*) See *post*, ch. 2; see also Companies Clauses Act (8 Vict. c. 16), as to the accountability of the officers of Joint Stock Company. Before any person entrusted with the custody or control of monies, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office; s. 109.

Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all monies received by him on behalf of the company; and such accounts shall state how and to whom, and for what purpose such monies shall have been disposed of, and together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all monies which shall appear to be owing from him upon the balance of such accounts; s. 110.

(*y*) See Story on Partnership, ch. 9, p. 278; Pothier de Société, n. 108, 126, 132.

(*z*) See Taylor v. Salmon, 4 Mylne & Cr. 134.

debit the association with more than the cost price (*a*); or make a corresponding profit on a sale effected by him on behalf of the association (*b*): but it would seem that the responsibility of directors or managers of a public company legally extends much further than this, for they are in the position of trustees for the other members who do not interfere (*c*). It is laid down as the duty of all persons united in a partnership association to avoid profuse, wanton or unnecessary expenditure in the partnership business, or rash and imprudent speculations, or negligent or extravagant sacrifices of the partnership property (*d*); but the directors of a public company entrusted with the exclusive management of its affairs could not, without the express consent of the whole body of members, make any material change or innovation upon the common, permanent or fixed property, or inheritable estate of the association, however great the apparent advantage might be (*e*). Hence, if the directors of Joint Stock Companies were to invest the surplus funds of the company in their hands on an insufficient security, or to use them themselves, they would be liable, as ordinary trustees, for the consequences. And it would seem that where a company exists with a fixed capital, to be em-

(*a*) Hichens *v.* Congreve, 4 Russell, 564.
(*b*) See Walburn *v.* Ingilby, 1 Mylne & Keen, 61.
(*c*) River Dunn Navigation Com. *v.* North Midland Railway Company, 1 Railway Cases, 135; see Deeks *v.* Stanhope, 14 Sim. 57; and Burnes *v.* Pennell, 13 Jur. 897.
(*d*) Story on Partn. b 2, s. 1, p. 127, 2nd ed.
(*e*) Pothier de Societé, n. 87, 88.

barked in public works, and the directors represent the entire of the capital to be paid up, or apply part of such capital in payment of current expenses and dividends, instead of in the expenses of construction, making it appear by improper accounts to the shareholders that there was a net balance of revenue, this would be such a breach of trust as to make them amenable in a Court of Equity (*f*). And the same rule will obviously apply if money be borrowed on mortgage of the permanent property of the association and so applied (*g*).

By the Companies Clauses Act, the capital of the company is directed to be divided into shares of the prescribed number and amount, and numbered in arithmetical progression, beginning with number 1 (*h*).

The money contributed by the shareholders, and that which is subsequently borrowed on the credit of the undertaking (*i*), is obviously the ca-

(*f*) See Preston *v.* Grand Collier Dock Company, 2 Ry. C. 335; Mangles *v.* Same, *ib.* 359.

(*g*) "Dividends are supposed to be paid out of profits only; and when directors order a dividend to be paid, where no such profits have been made, without expressly saying so, a gross fraud is practised, and the directors are not only civilly liable to those whom they have deceived and injured, but are guilty of a conspiracy, for which they are liable to be prosecuted and punished." *Per* Lords Campbell and Brougham in Burnes *v.* Pennell, 13 Jurist, 87.

(*h*) 8 Vict. c. 16, s. 6.

(*i*) See *ante*, p. 15. If it be not otherwise provided by the special act, the company may raise the money authorized to be borrowed by creating new shares, instead of by borrowing, but such augmentation of capital must be authorized at a general meeting of the company (8 Vict. c. 16, s. 66); such additional capital is subject to the same provisions, as to payment of calls, &c., as the original capital, except as to the time and amount of the calls which

pital of the company, which cannot, unless on very secure calculations, be infringed upon without jeopardising the stability of the undertaking; regulations are therefore prescribed by act of parliament with the view of preventing the capital of companies being withdrawn under the name of dividends (*k*).

As already observed, arrangements are often made amongst rival railway companies of a very complicated kind, as to leasing, amalgamation, &c. of their respective undertakings (*l*), but it is very obvious that such arrangements cannot be

may be fixed by the company. (*Id.* s. 57.) If the old shares are at a premium, then, unless it be otherwise ordered by the special act, the new shares must be offered to the shareholders in proportion to their existing shares, such offer to be made in the manner prescribed. (*Id.* s. 58.) Such new shares vest in the shareholders, who shall accept them, and pay the instalments due thereon; and if any shareholder fails for one month to accept them or pay the instalments, the company may dispose of them. (*Id.* s. 59.) If the old shares are not at a premium when the capital is augmented, the company may issue the new shares on such terms as they think fit. (*Id.* s. 60.)

(*k*) Previously to every ordinary meeting, at which a dividend is intended to be declared, a scheme must be prepared by the directors, showing the profits of the company, and apportioning the same among the shareholders, and such scheme being exhibited at the meeting, a dividend may be declared accordingly. (8 Vict. c. 16, s. 120.) No dividend may be made whereby the capital stock will be in any degree reduced, provided that the word "dividend" shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose, at an extraordinary meeting, to be convened for that object. (*Id.* s. 121.) Before the profits are apportioned, the directors may set aside a sum to meet contingencies, or for enlarging, repairing or improving the works. (*Id.* s. 122.) No dividend is payable in respect of any share until the calls payable on all shares held by the owner thereof are paid. (*Id.* s. 123.) See as to this, Naylor *v.* South Devon Railway Company, 1 De Gex & Smale, 32.

(*l*) See *ante*, p. 15.

carried into effect without the express sanction of the general body of shareholders: and the directors or managing body entering into such arrangements without authority would, it seems, be liable to make good any loss incurred in consequence by the shareholders (*m*).

It was laid down in a recent case (*n*), that the managing body of a railway company, incorporated by act of parliament, are not entitled to employ the funds of the company in, or to guarantee the payment of, a dividend, or the repayment of capital to other parties, who engage in undertakings which are not part of or directly connected with the works authorized by the act of parliament; notwithstanding the fact that the new arrangement increases the traffic of the railway, and a majority of the shareholders in the railway company approve of such application of their funds, and the object is not against public policy: and it was accordingly held, that the directors of a railway company having proposed to guarantee the parties who should form a joint stock steam-packet company, to run vessels from a port to which the railway would convey passengers, one of the shareholders in the railway company was entitled to sue in behalf of himself, and all the other shareholders (except the directors, who were defendants), although

(*m*) Gilbert *v.* Cooper, 10 Jur. 580, 602; Goodman *v.* De Beauvoir, 10 Jur. 938.

(*n*) Colman *v.* The Eastern Counties Railway Company, 16 Law J. (N. S.) Chancery, 73; 10 Beav. Ch. Rep. 1.

some of these shareholders had taken shares in the steam-packet company (*o*).

With all these restrictions, however, the acting members or directors of a joint stock company have, like the acting members of an ordinary partnership, very extensive authority over the funds of the undertaking. Thus, after raising money for the express purpose of paying off a particular incumbrance, directors have been held to have a discretionary power to apply it in a manner wholly different(*p*); and it must be remembered, that the directors or managing body of a joint stock company are of course entitled to reimbursement out of the funds for all legitimate and proper expenses incurred in performing the duties imposed on them (*q*), and may apply the funds in their hands to objects, however expensive, which the interests of the company seem to require, e. g. opposing a bill in parliament for a rival or prejudicial undertaking (*r*).

(*o*) Colman *v.* The Eastern Counties Railway Company, 16 Law J. (N.S.) Chan. 73; 10 Beav. Ch. Rep. 1.

(*p*) See Yetts *v.* Norfolk Railway Company, 5 Rail. Cases, 487; 13 Jur. 249.

(*q*) See Attorney-General *v.* Norwich, 2 Mylne & C. 406.

(*r*) See Brighton *v.* North, 16 Law J. (N.S.) Chan. 255.

CHAPTER II.

OF THE LEGAL REGULATIONS FOR KEEPING AND AUDITING JOINT STOCK COMPANIES' ACCOUNTS.

THE professed object of book-keeping in general—to show the actual state of the finances, debts and credits, profits and losses, assets and liabilities of mercantile undertakings (*a*)—is obviously the only legitimate end of the books of account of a Joint Stock Company.

In ordinary mercantile establishments immediate personal interest generally tends to preserve accuracy in this respect, and where traders are so improvident as to omit keeping correct accounts of their dealings, the law steps in on behalf of those who are afterwards made to suffer by it, and imposes various penalties for the neglect (*b*). In the case of joint stock undertakings, however, where the persons on whom the immediate duty of keeping accounts devolves are not always those most interested in securing their accuracy or completeness, the law goes a step further, and posi-

(*a*) See Compendium, p. 74.

(*b*) See Compendium, p. 2; and see provisions of 12 & 13 Vict. c. 106, s. 256, pars. 1, 2, 8, 9.

The clause in the bankruptcy act as to destroying books, &c., or making false entries, is adopted in the 7 & 8 Vict. c. 111, s. 30, with respect to Joint Stock Companies; see also 8 & 9 Vict. c. 98, s. 28, as to Irish Companies.

tively enforces the keeping of regular accounts by the acting officers.

The *Joint Stock Companies Registration Act* (*c*), and the *Companies Clauses Act* (*d*), prescribe what the French *Code de Commerce* (*e*) does in all cases of commercial undertakings, the observance of a regular system of accounts; but though these laws require Joint Stock Companies to have their accounts duly entered (*f*), properly balanced (*g*), and accessible to all who are interested in them (*h*), and the deed of settlement of registered companies may, and often does, provide more minutely in

(*c*) 7 & 8 Vict. c. 110.

(*d*) 8 Vict. c. 16, ss. 115, *et seq.* incorporating the clauses required by the standing orders of the House of Commons, Ord. 89.

(*e*) Liv. 1, tit. 2.

(*f*) "That the directors shall cause the accounts of such company to be duly entered in books to be provided for the purpose;" 7 & 8 Vict. c. 110, s. 34.

(*g*) "That fourteen days at the least before the period at which the accounts are required to be delivered to the auditors as herein-after provided, the directors of such company shall cause the books of the company to be balanced, and a full and fair balance sheet to be made up, and that previously to such balance sheet being delivered to the auditors as herein-after provided, the directors, or any three of their number, shall examine such balance sheet and sign it as so examined, and that when the balance sheet shall have been so examined the chairman of the directors shall sign such balance sheet, and that thereupon the directors shall cause the same to be recorded in the books of the company." *Ib.* s. 35.

(*h*) "That at each ordinary meeting of the shareholders the directors shall produce such balance sheet to the shareholders assembled thereat." *Ib.* s. 36.

"That during the space of fourteen days previously to such ordinary meeting, and also during one month thereafter, every shareholder of the company may, subject to the provisions of the deed of settlement or of any bye-law, inspect the books of account and the balance sheet of the company, and take copies thereof and extracts therefrom, and that if at any other time three directors authorize in writing any shareholder to make such inspection, then at such other time the shareholder so authorized may make such inspection." *Ib.* s. 37.

detail for the proper keeping and management of the accounts, the number and description of books to be kept, and the mode of balancing them and making the *results known* to the shareholders (*i*);

(*i*) The provisions of the *Companies Clauses Act* (8 Vict. c. 16), with respect to keeping of accounts, and the right of inspection thereof by the shareholders, are as follows: "The directors shall cause full and true accounts to be kept of all sums of money received or expended on account of the company by the directors, and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received or disbursed and paid." *Ib.* s. 115.

"The books of the company shall be balanced at the prescribed periods, and if no periods be prescribed, fourteen days at least before each ordinary meeting, and forthwith, on the books being so balanced, an exact balance sheet shall be made up, which shall exhibit a true statement of the capital, stock, credits, and property of every description belonging to the company, and the debts due by the company at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half year, and previously to each ordinary meeting such balance sheet shall be examined by the directors or any three of their number, and shall be signed by the chairman or deputy chairman of the directors." *Ib.* s 116.

"The books so balanced, together with such balance sheet as aforesaid, shall for the prescribed periods, and, if no periods be prescribed, for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the company, but the shareholders shall not be entitled at any time except during the periods aforesaid to demand the inspection of such books, unless in virtue of a written order signed by three of the directors." *Ib.* s. 117.

"The directors shall produce to the shareholders assembled at such ordinary meeting the said balance sheet, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon as hereinbefore provided." *Ib.* s. 118.

"The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose, and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or extracts therefrom at any reasonable time during one fortnight before and one month after every ordinary meeting, and if he fail to permit any such shareholder to inspect such books, or take copies or extracts therefrom, during the periods aforesaid, he shall forfeit to such shareholder for every such offence a sum not exceeding five pounds." *Ib.* s. 119.

A shareholder should, it seems, proceed in all cases according to

yet recent investigations have shown that without some more stringent regulations *as to the mode of auditing the accounts of Joint Stock Companies than the law now provides, the accounts themselves rather facilitate than prevent mismanagement and fraud* (*k*).

As a general rule, the books of a company or corporation, relating merely to their own transactions, afford no evidence against strangers, but they are generally admissible in evidence in actions and proceedings between their own members (*l*).

By the 49th section of the 11 & 12 Vict. c. 4, it is enacted, that as between the *contributories* the books, accounts, and documents of the company shall be primâ facie evidence of the truth of all matters therein contained, and purporting to be therein recorded (*m*); and it is provided by the 7 & 8 Vict. c. 110, s. 32, that the books containing entries of the proceedings of the company, and purporting to be signed by the presiding chairman,

the act in order to obtain inspection of the books. Shareholders are not permitted, after neglecting the means with which the statute provides them for knowing how the directors have proceeded, to claim to inspect their proceedings as soon as a call is made, in order to find out a defence; see per Patteson, J., in Birmingham and Bristol Railway *v.* White, 1 Q. B. 288; 2 Railway Cases, 863.

(*k*) See as to this the Reports of the House of Lords' Committee on the Audit of Railway Accounts, 1849, which are full of very valuable information on the subject of accounts.

(*l*) See Marriage *v.* Lawrence, 3 B. & Ald. 144; Mayor of London *v.* Lynn, 1 H. Bl. 214 a; Taylor on Evidence, 1162.

(*m*) See R. *v.* St. George's Steam Packet Company, 18 Law Jour. (N. S.) Ch. 256; Hill *v.* Manchester and Salford Waterworks Company, 5 B. & Ald. 866; see also 7 & 8 Vict. c. 113, s. 36, and 8 Vict. c. 16, s. 28, as to register of shareholders being evidence against shareholders in actions for calls.

and to be sealed with the seal of the company, shall be primâ facie evidence not only of the proceedings of the meetings entered, but "of such meetings having been duly convened, and of the persons making or entering such orders or proceedings being shareholders or directors, and of the signature of the chairman."

The accounts of a Joint Stock Company, like those of an ordinary partnership, should afford sufficient information both to the managers and the shareholders to enable them to judge of the success of the undertaking. The system of *double entry*, so generally adopted in the case of ordinary partnerships (*n*), seems peculiarly necessary in the species of accounts now under consideration, both in order to afford information to the shareholders and to enable the auditors to perform their duty with efficiency.

The actual mode in which companies' accounts are usually kept does not seem always to answer this purpose, and, indeed, very great diversity seems to prevail among Joint Stock Companies on this head. The *subsidiary books* of accounts (*o*) in use among different classes of companies must vary according to the nature of the undertaking; and the complicated manner in which what is called the *Capital Account* of Joint Stock Companies is kept, appears to give rise to the chief errors that prevail in this class of accounts. The rudest

(*n*) See Compendium, &c., chap. 2.
(*o*) See Compendium, p. 75.

system of book-keeping prevailing in the case of trading associations appears to be that adopted among mining companies, a book called the *Cost Book* being the principal book used in the establishment, having an account entered in it between the purser of the mine and the adventurers, showing the receipts and expenditure of the mine during a given time (usually a month), when a balance being struck, a meeting is held, at which the accounts are passed, and a *call* made or a dividend paid, as the case may be. The case of banking companies, on the other hand, presents an instance of an extremely complicated system of book-keeping, necessarily involving a multitude of accounts and of books, rendered more intricate by the circumstance of the customers of the bank being in so many instances shareholders, and having, therefore, usually distinct current accounts of their banking transactions, and their stock, shares, interest, and dividends. The accounts of a railway company also are often of a very complicated nature, arising from the varying modes in which the capital has been raised, and in which different portions of it are secured.

It seems obvious that, in order to afford the requisite information to the managers and shareholders, the accounts of a company should distinctly show their financial condition, their assets and liabilities, &c. Like the books of an ordinary partnership, the accounts should in fact show the stock or capital of the company ascertained by

bonâ fide valuation, and the balance of revenue remaining after setting apart sufficient to meet all expenses and liabilities. The accounts of a railway company, for instance, should show, first, the amount of capital authorized to be raised or borrowed, and the mode in which it has been laid out; and secondly, the ordinary revenue and expenditure entered under the particular heads of receipts and disbursements, credits and liabilities, and showing the balance upon which a dividend becomes fairly disposable.

Whatever has been really laid out in the original formation of the company, and the bonâ fide construction of the works, which form the subject of the undertaking, may be of course fairly regarded as an invested portion of the capital, and be carried accordingly to that account; but such as are from time to time incurred in the management of the undertaking, in repairing the works, in paying interest on money borrowed, &c., can by no good system of accounts be so treated. They ought properly to come under the head of outgoings or losses, and the profit and loss account can only be made out by debiting all these outgoings or losses and crediting the income or revenue (*p*).

The capital of a Joint Stock Company, as of a partnership, may of course consist partly of money borrowed, but it is obvious that in order to show a clear balance of profit, whilst the ascertained value

(*p*) See on this subject the judgment of the House of Lords in Burnes *v.* Pennell, *ante*, p. 23; Compendium, p. 87.

of the stock, funds, and revenue, are credited, the amount of liabilities to the lenders, &c., as well as the shares of the various members, must be debited together with the actual outlay.

By the established usage of accountants, it has been observed in another place (*q*), the books of an ordinary partnership invariably show the *firm* to be exactly solvent, the losses being at the time of balancing carried to the individual partner's account, and the firm credited with the amount for which he is found liable. Whether any such system could conveniently be adopted in the case of Joint Stock Companies may perhaps admit of some doubt, but at all events the books should distinctly disclose the amount of any balance of loss as well as of profit at each particular period of balancing.

Auditing the Accounts.—The two acts that have already been alluded to prescribe various regulations as to the appointment of auditors and the mode of auditing the accounts of a Joint Stock Company (*r*).

(*q*) Compendium, p. 95.

(*r*) Every Joint Stock Company completely registered under this act shall annually at a general meeting appoint one or more auditors of the accounts of the company (one of whom at least shall be appointed by the shareholders present at the meeting in person or by proxy), and shall return the names of such auditors to the registrar of Joint Stock Companies, and if an auditor be not appointed on behalf of the shareholders, or if he shall die or become incapable of acting, or shall decline to act at the prescribed period, or if such return be not made, then on the application of any shareholder of the company, it shall be the duty of the Committee of Privy Council for Trade, and they are hereby authorized, to appoint an auditor on behalf of the shareholders, and such auditor shall continue to

act till the next general meeting, and the due appointment of such auditor shall be returned to the Registrar of Joint Stock Companies, and thereupon it shall be his duty to register the same, and it shall be lawful for the Commissioners of the Treasury and they are hereby empowered to appoint that the company shall pay to such auditor such salary or remuneration as to the said commissioners shall appear suitable having regard to the duties of his office, and thereupon such auditor shall be entitled to recover such salary from the company as and when it shall become due, according to the terms of the appointment thereof. 7 & 8 Vict. c. 110, s. 38.

Twenty-eight days at least before the ensuing ordinary meeting at which such balance sheet is required to be produced to the shareholders, the directors shall deliver to the auditors the half-yearly or other periodical accounts, and the balance sheet required to be presented to the shareholders, and the auditors shall receive from the directors such accounts and balance sheet and examine the same. *Ib.* s. 39.

Throughout the year, and at all reasonable times of the day, it shall be lawful for the auditors, and they are hereby authorized, to inspect the books of account and books of registry of such company, and the auditors may demand and have the assistance of such officers and servants of the company, and such documents as they shall require for the full performance of their duty in auditing the accounts. *Ib.* s. 40.

Within fourteen days after the receipt of such balance sheet and accounts the auditors shall either confirm such accounts and report generally thereon; or shall, if they do not see proper to confirm such accounts, report specially thereon, and deliver such accounts and balance sheet to the directors of the company. *Ib.* s. 41.

Ten days before the ordinary meeting of such company the directors shall, subject to the provisions of any deed of settlement or bye-law in that behalf, send, or cause to be sent, a printed copy of the balance sheet and auditors' report to every shareholder according to his registered address, and shall at such meeting of the company cause such report to be read together with the report of the directors. *Ib.* s. 42.

Within fourteen days after such meeting it shall be the duty of such directors, and they are hereby required, to return to the said registry office a copy of the balance sheet and of the report of the auditors thereon, and thereupon it shall be the duty of the Registrar of Joint Stock Companies, and he is hereby required, to register or file the same with the other documents relating to such company. *Ib.* 43.

The Companies Clauses Act, 8 Vict. c. 16, contains more extensive provisions with respect to the appointment and duties of auditors.

Except where by the special act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special act, elect the

prescribed number of auditors; and if no number is prescribed, two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office according to the provisions hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead. *Ib.* s. 101.

Where no other qualification shall be prescribed by the special act, every auditor shall have at least one share in the undertaking, and he shall not hold any office in the company, nor be in any other manner interested in its concerns except as a shareholder. *Ib.* s. 102.

One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority,) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect to the going out of office by rotation, be deemed a new auditor. *Ib.* s. 103.

If any vacancy take place among the auditors in the course of the current year, then at any general meeting of the company the vacancy may, if the company think fit, be supplied by election of the shareholders. *Ib.* s. 104.

The provision of this act, respecting the failure of an ordinary meeting at which directors ought to be chosen, shall apply mutatis mutandis to any ordinary meeting at which an auditor ought to be appointed. *Ib.* s. 105.

The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders as hereinafter provided. *Ib.* s. 106.

It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same. *Ib.* s. 107.

It shall be lawful for the auditors to employ such accountants and other persons as they may think proper at the expense of the company, and they shall either make a special report on the said accounts or simply confirm the same, and such report or confirmation shall be read together with the report of the directors at the ordinary meeting. *Ib.* s. 108.

CHAPTER III.

OF THE VARIOUS MODES OF LEGALLY INVESTIGATING JOINT STOCK COMPANIES' ACCOUNTS.

THE common law of England, which in ordinary cases prescribed the remedy by *action of account* (*a*), in order to call bailiffs and receivers to account, seems to have recognized a mode of proceeding against corporations to secure the same object. Thus we find in the *Register* (*b*) a form of writ for taking the accounts of money collected for repairing a city, paving streets, building town walls, &c.; but just as the *action of account* sunk into disuse, in consequence of the neglect to adapt its machinery to the exigencies of the times (*c*), so the writ we are now speaking of gradually gave way to the proceeding by information, at the suit of the Attorney-General, in the case of public bodies (*d*), and this mode of proceeding, which was for a long time almost exclusively adopted in the cases of

(*a*) See Compendium, p. 114.

(*b*) Registrum Brevium, 138.

(*c*) The subject of reviving the extremely useful and inexpensive remedy by *action of account*, by relieving it of the trammels of written pleadings, has lately been publicly broached, and may perhaps ere long receive the sanction of the legislature. See a paper on this subject recently read before the Law Amendment Society by the author.

(*d*) See per Lord Redesdale, in Attorney-General *v.* Mayor of Dublin, 2 Bligh, N. S. 337.

incorporated bodies (*e*), at length also in its turn gave way to that by bill in equity (*f*), at the suit of individual members or shareholders.

The legislature has recently prescribed a variety of additional modes of proceeding, both in order to compel the acting officers of Joint Stock Companies to render their accounts, and also to facilitate the winding up and adjustment of the accounts of insolvent or unsuccessful schemes (*g*), and it would now seem to be optional to adopt either of these remedies, though none of such modes of proceeding of course preclude the accounts being wound up or adjusted by private arrangement among the members (*h*). Indeed, when a bonâ fide arrangement has been made with that view, the Court of Chancery will not generally interfere, either in pursuance of its ordinary jurisdiction (*i*) or under the statutes just referred to, unless special grounds are stated for such interference (*k*).

The proceedings with reference to the investigation of Joint Stock Companies' accounts, that will

(*e*) See Attorney-General *v.* Baliol College, 9 Mod. 409; Attorney-General *v.* Mayor of Dublin, 1 Bligh, N. S. 312; Attorney-General *v.* Norwich, 2 Mylne & Cr. 406.

(*f*) See *post*, sect. 2.

(*g*) See 7 & 8 Vict. c. 111; 8 & 9 Vict. c. 98; 9 & 10 Vict. c. 28; and see *post*, sect. 3; 11 & 12 Vict. c. 45; 12 & 13 Vict. c. 108, *post*, sect. 4.

(*h*) See instances, Lyon *v.* Haynes, 5 Man. & Gr. 504.

(*i*) See Waters *v.* Taylor, 15 Ves. 10.

(*k*) Ex parte Pocock, re London and Manchester Railway Company, 5 Railway Cases, 607. See Re the Lancaster and Newcastle-upon-Tyne Railway Company, 5 Railway Cases, 632; Ex parte Murrell, re London and South Essex Railway Company, 5 Railway Cases, 612.

be here treated of, are, 1st. Those prescribed by the 8 Vict. c. 16, s. 120, to compel the officers of Joint Stock Companies to furnish accounts; 2ndly. The remedy by suit in equity; 3rdly. The proceedings in case of the bankruptcy of Joint Stock Companies; and 4thly. The proceedings under the 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108, commonly called the *Winding-up Acts*.

Section I.

Of the Remedies by Act of Parliament to enforce correct Accounts.

The Companies Clauses Act (*l*) provides for the accountability of the officers of Joint Stock Companies, every person entrusted with money being required, previously to entering on his office, to give security (*m*), and afterwards on demand to render to the directors a correct account and pay over the balance in hand (*n*), and summary remedies are given against such officers, &c. (*o*), and each shareholder is entitled to inspect and take copies and extracts from the books of the company (*p*); but, as observed in the Report of the

(*l*) 8 Vict. c. 16.
(*m*) *Ib.* s. 109.
(*n*) *Ib.* s. 110.
(*o*) *Ib.* ss. 111, 112, 113.
(*p*) *Ib.* s. 119. The 7 & 8 Vict. c. 111, s. 30, also provides, that if any person, being a member of any such company or body which shall become bankrupt, shall after and with knowledge of an act of bankruptcy, within the meaning of this act, committed by

Committee of the House of Lords on *Railway Audit*, these provisions of the legislature have been and may be defeated in various ways, so far as regards the mere shareholders. Books may be kept in such a form as to be unintelligible for practical purposes, certain books and accounts only may be produced, whilst others, indispensable for the investigation, may be refused. Irresponsible persons may be named as book-keepers, who avoid attendance on the company's office at the period fixed for inspection, and from whom the recovery of a penalty may be impossible.

The committee recommend that the important privilege of inspecting the accounts granted to shareholders should be unrestrained; all accounts, without exception, touching or relating to the receipts and payments of the company should be required to be produced, and that in case of refusal or neglect, the directors should be made responsible for the default of their own officer, and the statutory penalty should be extended from the book-keeper to the governing body.

The inadequacy of these remedies renders it,

such company or body, or in contemplation of the bankruptcy of such company or body, have destroyed, altered, mutilated or falsified any of the books, papers, writings or securities of such company or body, or made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud the creditors of such company or body, or to defeat the object of this or any other statute relating to bankrupts, every such person shall be deemed to be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned in any common gaol or house of correction for any term not exceeding three years, with or without hard labour."

therefore, unnecessary to say more on the subject here; and the practice of proceeding in relation to Joint Stock Companies' affairs, both under the ordinary jurisdiction of the superior courts of law and equity, and also under the recent statutes for *winding up* the affairs of unsuccessful companies, must at present completely supersede the *summary remedies* just alluded to.

Section II.

Of Suits in Equity for an Account.

It is now established that an incorporated association may, like any other body, be called upon by bill in equity to render an account (*q*); and, as we shall see, many of the technical difficulties as to *parties* and *pleadings* which formerly prevented recourse being had to this mode of proceeding have been gradually removed; but the well-known inapplicability of the mode of procedure in the *Master's Office* offer insuperable obstacles to the accounts of a Joint Stock Company being thus satisfactorily adjusted (*r*).

(*q*) See Adley v. The Whitstable Company, 19 Ves. 304.

(*r*) To make use of the language used in a well written pamphlet on this subject—"There is wanted, to make equity courts efficient in partnership cases, a judicial interference as speedy as that in bankruptcy—a mode of making an immediate binding list of all sharenolders and contributories, and of making out, by a judicial officer, partnership accounts which shall be *primâ facie* binding—a mode of making and enforcing summarily calls on account of debts, and payments *on account* of contribution."—*Letter to Mr. Bellinger Brodie, by Messrs. Field and Rigge, April*, 1846.

Independent of the express jurisdiction conferred by recent statutes, the rule of courts of equity seems to be, that suits to dissolve an existing or continuing company, or to wind up its affairs, cannot be maintained unless all the shareholders, however numerous, are made parties (*s*). But where the subject-matter of the adventure or undertaking in which the company are interested has been brought to a termination by the sale of the stock or property, &c., or otherwise, then a different rule appears to prevail (*t*); and it has been repeatedly held in recent cases, that where a dissolution is not prayed, a bill may be filed by one or more on behalf of all against a few whose interest is adverse to all the rest (*u*).

Thus a bill in equity may be sustained by one or more of the shareholders, calling upon the directors to account for monies come to their hands (*x*), which they ought to have collected, and all monies expended, discounts, losses, &c., or against the managing committee of a defunct scheme with the same object, and praying for an application of the funds found to be remaining in

(*s*) Chaney *v.* May, Prec. Ch. 592; Evans *v.* Stokes, 1 Keen, 24; Richardson *v.* Hastings, 7 Beav. 323; see Richardson *v.* Larpent, 7 Jur. 691; Sharp *v.* Day, 10 Jur. 469.

(*t*) See Mare *v.* Malachy, 1 Mylne & Cr. 559.

(*u*) See per Lord Chancellor in Richardson *v.* Hastings, 7 Beav. 323.

(*x*) See Hichens *v.* Congreve, 4 Russ. 562; Taylor *v.* Salmon, 4 M. & Cr. 134; Wallworth *v.* Holt, *ib.* 619; Deeks *v.* Stanhope, 14 Sim. 57; Wilson *v.* Stanhope, 2 Coll. 629, overruling Lord Eldon's decision, Vansandau *v.* Moore, 1 Russ. 441; see Deeks *v.* Stanhope, 14 Sim. 57, case of Marylebone Bank.

their hands (*y*), or to make certain directors personally liable for losses incurred by the company (*z*), or to impeach some particular transaction in which they have been engaged (*a*).

Where, however, an express remedy is provided by statute, it seems that the Court of Chancery will not interfere (*b*); and it is also laid down, that the Court will not interfere to control the directors in the exercise of any discretionary power which they may have, *e. g.*, to apply funds in any particular manner (*c*), or with respect to acts which have been confirmed by a majority of the shareholders assembled at a general meeting (*d*).

The practice with respect to matters of account referred to a Master in Chancery will be found fully treated of in another place (*e*). The delay and expense ordinarily attendant on proceedings in the Master's Office in an equity suit suffice to prevent recourse being had to them whenever any adequate substitute can be found; and in the

(*y*) Cooper *v.* Webb, 15 Simons (V. C.) 454. A bill in equity for an account which makes out the scheme sought to be investigated to be a bubble has been held to be demurrable, inasmuch as relief can in such a case be obtained at law. Harvey *v.* Collett, 15 Sim. 332.

(*z*) Deeks *v.* Stanhope, 14 Sim. 57.

(*a*) Preston *v.* Grand Collier Dock Company, 11 Simons, 327; 2 Mylne & Cr. 406; 2 Railway Cases, 335; order to wind up made in a suit, 12 & 13 Vict. c. 108, s. 4.

(*b*) See Mozley *v.* Alston, 4 Railway Cases, 636; Foss *v.* Harbottle, 2 Hare, 461; Lord *v.* Copper Mining Company, *sup.*

(*c*) See Yetts *v.* Norfolk Railway Company, 5 Railway Cases, 487.

(*d*) See Lord *v.* Copper Miners' Company, 2 Phillips, 740; 18 Law Journ. N. S. Ch. 65; Exeter and Crediton Railway Company *v.* Buller, 5 Railway Cases, 211.

(*e*) See Compendium, ch. 3, s. 5, *Suits in Equity for an Account.*

proceedings under the recent statutes discussed in the two next sections a much more satisfactory remedy is provided in cases where those acts apply, so much so, indeed, that it has been recently observed, the new mode of proceeding must be deemed the first step towards revolutionizing the cumbersome system of the Court of Chancery (*e*).

Section III.

Of the Bankruptcy of Joint Stock Companies.

The 7 & 8 Vict. c. 111, enables the creditors of Joint Stock Companies, unable to meet their pecuniary engagements, to take proceedings in many respects similar to those adopted in the case of ordinary bankruptcies, the law and practice in bankruptcy being extended as far as applicable to fiats under the act (*f*).

On an incorporated, commercial or trading company, or any other body of persons associated together for commercial or trading purposes, committing an act of bankruptcy on the part of the company, a fiat in bankruptcy may issue against the same, and be prosecuted in like manner as against other bankrupts, subject to the provisions of the act (*g*); but it is expressly provided, that the bankruptcy of the company shall not be con-

(*e*) See Law Review for November, 1849, p. 674.
(*f*) Sect. 11. (*g*) Sect. 1.

strued to be a bankruptcy on the part of any individual member (*h*).

The act prescribes the mode of proceeding with regard to the service of the adjudication of bankruptcy under a fiat against a company (*i*); and the mode of a company's becoming bankrupt by a voluntary declaration of insolvency on the part of the company (*k*); or an omission to pay, secure or compound for a judgment debt upon which the plaintiff might sue out execution within fourteen days after notice (*l*), or disobedience to an order of a Court of Equity, &c. for payment of money after service of order for payment on a peremptory day fixed (*m*); or omitting within one month after an affidavit filed, and a writ of summons issued by a creditor, to pay, secure or compound to the satisfaction of the creditor, or to satisfy a judge of their intention to defend the action on the merits (*n*).

The assignees of a bankrupt company are enabled to recover debts due to the company, and creditors to prove or claim under the fiat for amounts due to them on balance of accounts, or otherwise (*o*); and it is expressly provided, that members' shares shall not be set off against a demand which the assignees of the estate and effects of a company adjudged bankrupt may have (*p*).

(*h*) Sect. 2. (*i*) Sect. 3. (*k*) Sect. 4.
(*l*) Sect. 5. (*m*) Sect. 6. (*n*) Sect. 7.
(*o*) Sect. 8.
(*p*) Sect. 9. No action, &c. by a creditor of a company, so far as concerns his recourse against the person, &c. of any member, affects

This act furnishes the mode in which the balance sheet shall be prepared (*q*); and the mode of proceeding for the summoning and examination of persons suspected to be in possession of property of the company, and in order to compel such person to produce books, &c. (*r*)

The Courts are authorized to direct the assignees of the estate of a company adjudged bankrupt to petition the Court of Chancery for directions for winding up the affairs of the company; upon which petition an order of reference may be made and accounts taken, and upon the confirmation of the Master's report a receiver may be appointed (*s*); and the Court of Chancery may make orders in individual claims of members in respect of the transactions of the company (*t*).

his right to issue or prove under a fiat against the company for any debt remaining unsatisfied, and a fiat or a proof on proceeding thereon does not affect any action by a creditor, so far as concerns his recourse to the person, &c. Sect. 10.

(*q*) The Court may order the directors of a company adjudged bankrupt, &c. to prepare and file a balance sheet and accounts, and to make oath of the truth thereof; and the court may make allowance out of the estate for the preparation thereof; sect. 12. And persons ordered by the court to prepare balance sheets are obliged to surrender at the last examination under the fiat, and to submit to be examined, &c., and to incur such danger and penalty for not conforming; &c., as is now provided against a bankrupt; sect. 13. And the 14th section confers the same freedom from arrest, &c. that bankrupts have on persons ordered to prepare the *balance sheet.*

(*r*) Sect. 15. The 16th and 17th sections regulate the costs of summoning under a fiat persons who are members, and the penalty on members (other than those ordered to prepare balance sheets) and other persons wilfully concealing the estate of the company; and the 18th and 19th sections enable the Court, after adjudication, to order any treasurer, &c. or solicitor, &c. of bankrupt, to deliver to official assignee or to the Bank all monies, &c. in his custody, &c., and give a power of commitment of persons disobeying any rule or order of the court duly made.

(*s*) Sect. 20.

(*t*) Sect. 21. General rules and orders may be made by the

Previous to passing the last examination, the court is directed to inquire into the cause of the failure of a company, and after the last examination, to cause a copy of the balance sheet to be sent to the Board of Trade, and certify the cause of the failure, &c. (*u*)

After the Court shall have certified to the Board of Trade the cause of such failure, the Queen, upon the recommendation of the Board of Trade, may revoke any privileges granted to the company, and determine the company (*x*); and after the cause of failure has been so certified, the Board of Trade may institute prosecutions in certain cases (*y*).

The provisions of this act have been incorporated into an act for winding up the affairs of Joint Stock Companies in Ireland (*z*); and a more recent act (*a*) has specially provided for the dissolution of certain railway companies; but since the passing of the two statutes, whose provisions are described in the next section, it has not been

judges of the Court of Chancery as to the form and mode of proceeding for settling and enforcing contribution to be made by members of company, and the practice to be observed by the Court of Chancery and the Masters in such proceedings, s. 22. The 23rd section extends the provisions of the 41 Geo. 3, c. 90, to this act; and by sect. 24 it is declared, that decrees or orders made under this act by the Court of Chancery may be registered in Scotland, and execution may be had as upon a decree *interponed* upon a bond with a clause of registration.

(*u*) Sect. 25. (*x*) Sect. 26.

(*y*) Sect. 27. Until determination of the company by the crown, it is to be considered as subsisting for the original purposes, &c, sect. 28. And notwithstanding determination in any other manner, company to subsist as long as any matters remain unsettled, sect. 29.

(*z*) 8 & 9 Vict. c. 98. (*a*) 9 & 10 Vict. c. 28.

usual to resort to the remedies afforded by the former acts. It must be remembered, however, that these are not repealed; and their provisions may be resorted to whenever it is deemed advisable (*b*).

SECTION IV.

Of Proceedings under the "Winding-up" Acts.

The ordinary jurisdiction of the Court of Chancery being insufficient to enable the affairs of unsuccessful Joint Stock undertakings to be wound up; and the proceedings under the statutes mentioned in the last section being only available to *creditors*, two statutes have been since passed, entitled the Joint Stock "*Winding-up Acts*," of 1848 and 1849 (*c*), by which the affairs of Joint Stock Companies may be wound up and adjusted on the application of persons *liable to contribute* to their debts, losses or expenses.

(*b*) The reader is referred to the following cases (the only cases yet decided) which settle the practice under the statutes described in this section; Re Forth Marine Insurance Company, 9 Beav. 409; Ex parte Barber, re Tring, Reading and Basingstoke Railway Company, 1 De Gex, 381; Ex parte Morrison, ib. 539; 5 Railway Cases, 224; Ex parte Clark, re Tring and Reading Railway, 5 Railway Cases, 394. After an order made under the Winding-up Acts, the Court of Chancery will not interfere to prevent creditors from resorting to other remedies for recovering their demands, e. g. by foreign attachment in the city of London; Re India and Australia Mail Steam Packet Company, 13 Jur. 680, 819. [As to which remedy, see Pulling's Laws of the City of London, p. 175]. But the Court of Exchequer have refused to assist a creditor to obtain execution against a shareholder, unless it could be shown that proceedings taken under the Winding-up Acts were unavailing; Thompson *v.* Universal Salvage Company, 18 Law Jour. Exch. 242.

(*c*) 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108.

To what Companies Statutes apply.—The provisions of these "*Winding-up Acts*" are declared to extend to "all partnerships, associations and companies, whereof the partners or associates are not less than seven in number, whether incorporated or unincorporated, and whether or not previously formed or subsisting, other than and except railway companies incorporated by act of parliament, and mining companies, on the *cost-book* principle within the stannaries, where one-tenth in value of the shareholders shall not voluntarily assent (*d*)."

The first step under these statutes is by way of petition to the Court of Chancery (*e*), supported

(*d*) 12 & 13 Vict. c. 108, s. 1. The act of 1848 was much more limited in its operation, see 11 & 12 Vict. c. 45, s. 1, and it was deemed not to extend to any case which did not clearly and beyond all doubt come within its meaning; per Bruce, V. C. Re Herne Bay Pier Company, 18 L. J. (N. S.) Ch. 71; 1 De Gex & S. 588; e. g. a company formed for the purpose of affording landing accommodation for goods and vessels, and taking tolls, *id. ib.*; and it was doubted whether it extended to a company formed for insurance against loss by the death or disease of cattle. Ex parte Spackman, re the Agriculturist Company, 1 Hall & T. 229; 1 De Gex & S. 599; *sed vide* judgment of Lord Chancellor on appeal, 1 Macnaghten & Gordon, 170. The act of 1848 was however held to extend to an abortive railway scheme, abandoned previous to an act being obtained; Ex parte Barber re London and Manchester Direct Railway Company, 1 Hall & Twells, 238; 18 Law Journ. (N. S.) Ch. 242; 5 Railway Cases, 594; 1 Macnaghten & Gordon, 176; though a mining company, on the *cost-book* principle, formed before the passing of the act, was held to be included; Ex parte Wyld, re Wheal Lovell Mining Company, 1 Hall & Twells, 125; 1 Macn. & G. Companies already dissolved are included; Re Warwick Railway Company, 13 Jur. 651.

(*e*) And be it enacted, that it shall be lawful for any person who shall be or claim to be a contributory of a company to present a petition to the Lord Chancellor or to the Master of the Rolls in a summary way for the dissolution and winding-up, or for the winding-up of the affairs of such company, in any of the following cases; (that is to say),

1. If any company shall have committed, done, or suffered any

by affidavits showing that the company which it

act which according to the provisions of the said recited acts or any of them would be deemed to be an act of bankruptcy on the part of such company:

2. If any company shall, by virtue of a resolution to be passed in that behalf at a meeting of such company, or of the directors of such company, summoned in that behalf, have filed or caused to be filed in the office of the Lord Chancellor's secretary of bankrupts a declaration in writing that the said company is unable to meet its engagements:
3. If any person shall have recovered judgment in any action personal for the recovery of any debt or demand in any of her majesty's courts of record against any such company, or against any person authorized to be sued as the nominal defendant on behalf of such company, or against any one or more of the members or contributories of such company acting or sued in the name or on the behalf of the other members or contributories thereof, and shall be in a situation to sue out execution upon such judgment, and such execution shall not be restrained or suspended by any rule, order, or proceeding of any court of justice, and there shall be nothing due from the plaintiff by way of set-off, or which may be legally set off against such judgment, and if within ten days after notice in writing served upon the said company by service of the same upon a chief clerk, or secretary or registrar of the said company, or if there be no officer of such denomination, then either on any director of the said company personally, or by the same having been left at the head or only office for the time being of such company, requiring immediate payment or discharge of such judgment debt, such company shall not have paid, secured, or compounded for the same:
4. If any decree or order shall have been pronounced in a cause depending in any court of equity, or any order made in any matter of bankruptcy or lunacy, against any such company, or against any person duly authorized to be sued as the nominal defendant on behalf of such company, or against any one or more of the members or contributories of such company acting or sued in the name or on the behalf of the other members or contributories thereof, ordering any sum of money to be paid by such company, and such company shall not have paid the same at the time when the same ought, according to the exigency of such decree or order, to be paid:
5. If any action shall have been brought in any of her majesty's courts of record against any contributory of a company for any debt or demand which shall be due or claimed to be due from or by such company, and such company shall not within ten days after notice in writing by such contributory

is desired to *wind up* comes within the opera-

of such action shall have been served upon the company in manner hereinbefore directed with respect to any judgment debt, have paid, secured, or compounded for such debt or demand, or have otherwise procured such action to be stayed, or shall not have indemnified the defendant to his satisfaction against such action, and all costs, damages and expenses to be incurred by him by reason of the same :

6. If any creditor to a company to such amount as is now by law requisite to support a fiat shall have filed an affidavit in any of her majesty's superior courts of law at Westminster or Dublin, that such debt is justly due to him from the said company, and shall have sued out of the same court a writ of summons or other writ against such company, or against any person duly authorized to be sued as the nominal defendant on behalf of such company, or against any one or more of the members or contributories of such company, in the name or on behalf of the other members or contributories thereof, and shall have given notice of the same in manner hereinbefore directed with respect to any judgment debt, and such company shall not within three weeks after service of such notice have paid, secured or compounded for such debt to the satisfaction of such creditor, or have made it appear to the satisfaction of one of the judges of the court out of which such writ shall have issued, that it is the intention of such company to defend the action upon the merits, and shall not within three weeks next after service of such notice have caused an appearance to be entered to such action in the proper court in which the same shall have been brought :
7. If any company shall have been dissolved, or shall have ceased to carry on business, or shall be carrying on business only for the purpose of winding up its affairs, and the same shall not be completely wound up :
8. Or if any other matter or thing shall be shown which in the opinion of the court shall render it just and equitable that the company should be dissolved. 11 & 12 Vict. c. 45, s. 1.

And be it enacted, that in case any fiat shall have been issued against any company under the provisions of the said recited acts or any of them, no petition shall be presented for the dissolution and winding-up or for the winding-up of such company under this act by any other person than by the creditors' assignees of the estate and effects of any such company, who shall have power by the order and direction of the Court of Bankruptcy (but not otherwise) to present a petition to the Lord Chancellor or to the Master of the Rolls in England or Ireland, as the case may be, for the winding-up of such company under this act, and it shall be a sufficient ground for such petition that such order has been made by the Court of Bankruptcy ; and that upon an order for the winding-up

tion of the act (*f*), and praying for an order re-

of such company being pronounced by the Court of Chancery, the Court of Bankruptcy shall cause to be made upon the proceedings under the fiat a memorandum of such order as aforesaid of the Court of Bankruptcy, and shall order that the said proceedings shall be and the same shall accordingly be deposited with the master to whom the matter shall be referred by the Court of Chancery under this act: provided nevertheless, that it shall be lawful for the master to dispense with such deposit, and to make order concerning the custody and production of such proceedings. *Ib.* s. 6.

And be it enacted, that all proceedings had, accounts taken, and other matters done in the prosecution of any fiat, before any order absolute under this act, shall, for the purposes of any winding-up under this act, be as valid and conclusive as the same would have been valid and conclusive under the said fiat, and any pending proceedings, accounts, and matters under any such fiat may be proceeded with and concluded under this act. *Ib.* s. 7.

And be it enacted, that every petition and proceeding under this act shall be intituled "In the Matter of the Joint Stock Companies Winding-up Act, 1848," and in the matter of the company to which such petition or proceeding shall relate, describing such company by its most usual style or firm, until any order absolute under this act, and after any such order then by the style or firm by which such company shall have been designated in such order absolute. *Ib.* s. 8.

And be it enacted, that no order absolute, nor any order or proceeding under this act, shall be impeached by reason of the petitioner or any of the petitioners being afterwards discovered not to have been duly qualified to present the petition on which the order absolute shall have been made; provided that a petition may be presented under this act by some person duly qualified, praying to have the benefit of the former proceedings, and to be allowed to carry on and prosecute the same, and upon such petition being presented, and coming on to be heard, such order shall be made as to the court shall seem necessary and proper, empowering and directing that the former proceedings shall be carried on and prosecuted by the petitioner. *Ib.* s. 9. *See as to this clause,* Ex parte Barnett, re Ipswich Railway Company, 1 De Gex & S. 744; *and where two petitions in the same matter are answered in the same day, the first presented is entitled to pre-audience,* Re Brookman, 1 M'N. & G. 199.

(*f*) And be it enacted, that every petition for dissolution and winding-up, or winding-up, may be verified by affidavit annexed thereto, or subscribed at the foot thereof, at the time of presenting and filing the same, in the form or to the effect set out in the Schedule (B) annexed to this act; and that no costs of any further or additional affidavit in verification shall be allowed, unless specially allowed by the court. 12 & 13 Vict. c. 108, s. 3.

ferring it to one of the Masters of the Court to wind up the affairs of the company accordingly. This petition is required to be advertised in a certain manner (*g*), and the Court, after hearing what

SCHEDULE (B).

Affidavit verifying Petition for Dissolution and Winding-up, or Winding-up.

In the Matter of the Joint Stock Companies Winding-up Acts, 1848 and 1849, and of the —— Company.

I *A. B.*, the petitioner in the above-written [*or* annexed, *as the case may be*,] petition, make oath and say, that so much of the above-written [*or* annexed, *as the case may be*,] petition as relates to my own acts and deeds is true, and so much thereof as relates to the acts and deeds of any other person I believe to be true.

Sworn, &c.

(*g*) And be it enacted, that every petition for dissolution and winding-up or for winding-up the affairs of any company under this act shall be advertised once in the London Gazette, and shall be served at the head or only office of the company, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such office, or in case no office of the company can be found, then upon any member, officer, or servant of the company: provided always, that no such petition presented by the direction of the Court of Bankruptcy, nor any order thereon, shall require advertisement under this act; provided also, that in case no office of the company nor any member, officer, or servant thereof, can be found, the court may proceed to hear and to make any order on any petition for dissolution and winding-up or for winding-up, on production of the number of the London Gazette containing such advertisement (if any) as aforesaid, and without proof that such petition has been served in manner aforesaid. 11 & 12 Vict. c. 45, s. 10.

And be it enacted, that when any petition for dissolution and winding-up, or for winding-up the affairs of any company under the said recited act, shall have been presented, every subsequent petition relating to the affairs of such company shall be addressed to and marked for the same judge, and such petitions shall, in addition to the advertisement thereof in the London Gazette or in the Dublin Gazette directed by the said act, be advertised at least seven clear days before the hearing thereof, and once at least in two London daily morning newspapers, or in two Dublin daily newspapers (as the case may be), and also (in case the head or only office of the company be not in London, Westminster, or Southwark, or in Dublin,) once at least in some newspaper in general circulation in the county, city, or borough where the head or only office, or the

parties it thinks proper in support of it, may make the order of reference (*h*); but the act provides, that

last known head or only office of the company, is or was situate, and such advertisement may be in the form or to the effect set out in the Schedule (A) annexed to this act; and every contributory shall be entitled to be furnished by the solicitor presenting any petition with a copy thereof within twenty-four hours after requiring the same, on paying at the rate of four-pence per folio of ninety words for such copy. 12 & 13 Vict. c. 108, s. 2.

SCHEDULE (A).

Advertisement in Newspapers of Petition for Dissolution and Winding-up, or Winding-up.

In the matter of the Joint Stock Companies Winding-up Acts, 1848 and 1849, and of the —— Company.

Notice is hereby given, that a petition for the dissolution and winding-up [*or* for the winding-up, *as the case may be*,] of the above-named company was, on —— the —— day of —— 184—, presented to the Lord Chancellor [*or* Master of the Rolls, *as the case may be, specifying whether in England or Ireland*], by [*names of the petitioner or petitioners*,] and that it is expected such petition will be heard before the [Master of the Rolls, *or* the Vice-Chancellor, *as the case may be, specifying the name or title of the Vice-Chancellor*], on —— the —— day of ——, 184—, and any person desirous to oppose the making of an order absolute for the dissolution and winding-up [*or* winding-up, *as the case may be*,] of the said company under the said acts should appear at the time of hearing, by himself or his counsel, for that purpose, and a copy of the petition will be furnished to any contributory of the said company requiring the same by the undersigned, on payment of the regulated charge for the same.

A. B., or C. and *D.* solicitors for the petitioners,
[*adding their place of business.*]

(*h*) And be it enacted, that it shall be lawful for the court at the hearing to direct any such petition, whether the same shall have been served as aforesaid or not, to stand over, and to direct such service or such further service of the petition as to the court shall seem meet. 11 & 12 Vict. c. 45, s. 11.

And be it enacted, that on the hearing of any such petition it shall be lawful for the court, if it shall not think fit in the first instance to make an order absolute, to require any parties to show cause, within such time as the court shall think fit, why the company should not be dissolved and wound up or wound up under this act, or to make an order for the dissolution and winding-up or for the winding-up of such company conditional on the non-fulfilment of such terms and by such parties as the court shall think fit, or to refer it to the master to make preliminary inquiries as to the necessity or expediency

the Court may also make such an order, *motu proprio*, in any suit for the dissolution of any part-

of the dissolution and winding-up or of the winding-up of such company; and it shall be lawful for the court, in case no sufficient cause be shown, or in case the terms of any such conditional order be not fulfilled, or in case it shall appear from the master's report, upon such reference as aforesaid, that the dissolution and winding-up or the winding-up of any such company under this act is necessary or expedient, to make such order absolute as hereafter mentioned." *Ib.* s. 12.

And be it enacted, that it shall be lawful for the court, if it shall think it practicable and expedient, before or in making any order absolute, to direct the application or performance, either wholly or in part, and by such parties as it shall think proper, of any provisions contained in or supplied by the constitution of the company towards the purposes of such dissolution or winding-up, or towards considering or ascertaining the necessity or expediency of such dissolution or winding-up. *Ib.* s. 13.

And be it enacted, that it shall be lawful for the court, on the hearing of any petition for the dissolution and winding-up, or for winding-up, either originally or subsequently, or on further directions, to dismiss such petition, with or without costs, or to make an order absolute for the dissolution and winding-up or for the winding-up of the company, under the provisions of this act, with or without such special directions as the court shall think fit, and by such order it shall be referred to one of the masters of the court to wind up the affairs of the company accordingly under the provisions of this act. *Ib.* s. 14.

And be it enacted, that the date, title, and ordering part of every order of the court made upon any such petition, previously to and including the order absolute, shall, within twelve days after the date thereof, be advertised once in the London Gazette, and shall be served in such manner and upon such persons as the court shall direct. *Ib.* s. 15.

And be it enacted, that from the date of any order absolute for dissolution, or from any date to be therein fixed for that purpose, the company therein specified shall be absolutely dissolved. *Ib.* s. 16.

And be it enacted, that the petitioner on whose petition an order absolute shall be obtained shall without delay carry in the same before the master; and in default of his so doing by the space of ten days next after the date of such order it shall be lawful for any person being or claiming to be a contributory to present his petition to the court in the same matter, praying to have the carriage and prosecution of the said order absolute, and thereupon such order shall be made and directions given, as well with respect to the costs of the application or otherwise, as to the court shall appear just: and it shall be sufficient to serve such last-mentioned petition in the usual

nership, whether asked for or not (*i*). The order being made, is carried in before the Master to whom the matter is referred, who proceeds to

manner, either upon the petitioner who obtained the order absolute, or upon his solicitor by whom such order was obtained." *Ib.* s. 17.

(*i*) And be it enacted, that it shall be lawful for the court, in any decree or order for the dissolution of a company, or of any other association or partnership (whether included in the definition herein contained of a company or not), to be made in any suit now pending or hereafter to be instituted, and also by any order to be made after a decree for the dissolution of a company, association, or partnership in any such suit, to order that the affairs of such company, association, or partnership shall be wound up under the provisions of this act, and that the costs of winding-up the same shall be paid and recovered according to the provisions of this act, and for that purpose to give such directions as the court shall deem necessary or expedient in that behalf; and any decree or order so to be made shall, if the court shall so direct, be deemed an order absolute under this act. 11 & 12 Vict. c. 45, s. 18.

And be it enacted, that from and after the date of any order absolute it shall not be lawful for the directors, members, or officers of the company in respect of which such order absolute shall have been made to convey, assign, pay, or otherwise dispose of any of the property, monies, or other effects of the company, otherwise than by the direction of the master. *Ib.* s. 19.

And be it enacted, that the provision in the said act contained for empowering her majesty's high Court of Chancery in England and Ireland respectively, in any decree or order for the dissolution of a company or of any other association or partnership, as therein mentioned, to be made in any suit then pending or thereafter to be instituted, and also, by any order to be made after a decree for the dissolution of a company, association, or partnership in any such suit, to order that the affairs of such company, association, or partnership should be wound up under the provisions of the said act, and that the costs of winding-up the same should be paid and recovered according to the provisions of the said act, and for that purpose to give directions as therein mentioned, any decree or order so to be made to be deemed, if the said court should so direct, an order absolute under the said act, shall extend in all respects to any decree or order of the court for or relating to the winding-up of the affairs of any such company, association, or partnership as therein mentioned made in any suit now pending or hereafter to be instituted, and also to any order made after a decree for or relating to the winding-up of the affairs of a company, association, or partnership in any such suit. 12 & 13 Vict. c. 108, s. 4.

appoint an *official manager* (*j*) or managers, in whom all the assets of the company immediately

(*j*) And be it enacted, that in the meantime and until an official manager shall be appointed as hereinafter mentioned, and from time to time when there shall be no official manager, it shall be lawful for the master, in any case in which he shall deem it necessary or expedient so to do, immediately upon the order absolute being brought in before him, to appoint by writing under his hand some person to be the interim or provisional manager of the property, assets and effects of the company to which such order absolute shall relate, or of such part or parts thereof as the master shall think fit; and the person to be so appointed shall thereupon have and exercise all such and the like powers and authorities as are usually given to and are had and exercised by receivers appointed by the court in a suit duly instituted, together with all such powers and authorities as might be had and exercised by any official manager to be appointed under this act, except so far as the master shall otherwise direct in any particular case; and the person so to be appointed interim or provisional manager shall act in all things under the direction of the master, in collecting and receiving and afterwards disposing of the property, estate and effects of such company, or such parts thereof as in order to the preservation and security thereof shall require to be so collected and received; and it shall be lawful for such interim or provisional manager acting in that behalf under the direction of the master, to be signified by writing under his hand, to pay and apply any part of the monies, assets and effects to be collected, received or got in by him in or towards the discharge or satisfaction of any judgment debt which shall have been recovered against such company; and it shall be lawful for the master to fix the amount and nature of the security to be given and entered into by such interim or provisional manager, and also (if the master shall think fit) to appoint any person to be interim or provisional manager without giving or entering into any security, and the security, if any, to be so fixed by the master, shall accordingly be given and entered into by such interim or provisional manager: provided nevertheless, that upon the appointment of an official manager of such company under this act all the powers and authorities of such interim or provisional manager shall cease, and the person who shall have been such interim or provisional manager shall thereupon deliver up and pay to the official manager all the goods, monies, property and effects of such company which shall have come to his hands as such interim or provisional manager as aforesaid, together with all books, papers and writings in his possession, custody or power relating thereto, or to the affairs of such company: and it shall be lawful for the master to make an order, if need be, directing such delivery and payment accordingly, and for vacating any recognizance entered into by such interim or pro-

vest; to whom all books and papers are to be given up, by whom all suits by or on behalf of

visional manager and his surety or sureties (if any); provided also, that no action, suit or other proceeding shall be instituted or prosecuted by or against any interim or provisional manager to be appointed as herein mentioned, as representing the company, otherwise than by the style and designation of the official manager of the company; and that every such action, suit or other proceeding shall be instituted and prosecuted in the same manner and with the same effect, to all intents and purposes, as if an official manager of the company had been already appointed, and were a party to such action, suit or other proceeding, in the place of such interim or provisional manager, nor shall the same abate by reason of the appointment of an official manager, but the same shall be carried on by or against him, as the case may be. 11 & 12 Vict. c. 45, s. 20.

And be it enacted, that upon any order absolute being carried in before the master, or upon the death, removal or resignation of any official manager to be appointed as herein mentioned, the master shall forthwith direct that an advertisement be inserted, by the party having the prosecution or carriage of the order, in two successive numbers of the London Gazette, and also in such two or more newspapers as the master shall appoint, giving notice that the master will proceed, at a day, hour and place to be stated in such advertisement, such day to be within fourteen days from the publication of the first advertisement, to appoint an official manager or managers of the company under this act, either originally or in the room of any official manager who shall have died or resigned or shall have been removed; and previously to the making out and settling of such list of contributories as hereinafter mentioned all persons being or claiming to be contributories of such company, and after the making out and settling of such list of contributories all persons appearing on such list as contributories of such company, shall be entitled to attend at such time and place, and to offer proposals or objections as to any such appointment; and it shall be lawful for the master, if he shall think fit, to adjourn the appointment of any official manager to another time and place, to be stated and made known to the parties present at the time and place originally fixed for making such appointment: provided always, that it shall not be requisite to give notice of any such adjournment by advertisement. *Ib.* s. 21.

And be it enacted, that at the time and place to be fixed in such advertisement, or at any other time or place to which the appointment of an official manager shall have been adjourned, the master shall, by writing under his hand, appoint a person or persons to be the official manager or managers of the company, either originally or in the stead of any official manager who shall be removed, or die or resign his office; and the master shall have power from time to time, at his discretion, but subject to any special direction

the company in respect of its own members or other persons are to be prosecuted or defended (*k*),

of the court, to remove, by writing under his hand, any such official manager, and upon such removal, and also upon the death or resignation of any official manager, to appoint in manner aforesaid any other person to be official manager in the stead of any such manager who shall be removed or die, or resign his office; and such official manager may be either any contributory of any company, or the assignee in bankruptcy of any company, being bankrupt, or of any bankrupt member or contributory of the same. *Ib.* s. 22.

And be it enacted, that in making the first or any subsequent appointment of an official manager it shall be lawful for the master to adopt the proposal of any of the parties attending him in the matter of such appointment; and in making such appointment the proposal of any of the parties who shall have appeared before the court shall not be entitled on that account to any preference; and it shall also be lawful for the master, if he shall think fit, to act independently of any proposal, and to appoint any person whom he shall think proper to nominate as official manager, although such person shall not have been proposed by any of the parties." *Ib.* s. 23.

(*k*) And be it enacted, that immediately after the appointment of an official manager the master shall, by order, direct that all the books of account, deeds, instruments, cash, bills, notes, papers and writings of and belonging to the company shall, within a time to be limited in that behalf, be delivered up, and the same shall accordingly be delivered up, by every person in whose custody, possession, or power the same may be, to the official manager, and shall be kept by him, and upon and immediately after the appointment of any new official manager all the same matters shall be in like manner ordered to be and shall accordingly be delivered over to him: provided nevertheless, that it shall be lawful for the master from time to time, and at any time, to make such order as he shall think fit relative to the custody or deposit, either absolutely or only for a time, of such books of account, deeds, instruments, bills, notes, papers and writings, or any of them. 11 & 12 Vict. c. 45, s. 28. *This* clause does not extend to papers, &c., detained by a solicitor on the ground of lien; Potter's case. 1 De Gex & S. 729.

And be it enacted, that on every such appointment of an official manager all the estate, effects, and credits, and rights of action of the company, and all powers in and about the same, which by this act or otherwise might be exercised by an official manager, shall, except so far as the master shall, by writing under his hand, direct to the contrary, become by virtue of the appointment absolutely vested in the official manager so appointed either solely or jointly with any other official manager for the time being as joint tenants; and when, according to any laws now in force, any conveyance or assignment of any real or personal property which may become vested in any official manager under this act would require to be

and whose duty it is to ascertain the debts and

registered, enrolled or recorded in any registry office, court or place in England, Wales or Ireland, or in any registry office, court or place in Scotland, or any of the dominions, plantations or colonies belonging to her majesty, then the order absolute, together with the first appointment of an official manager, shall be registered in the registry office, court or place wherein such conveyance or assignment as last aforesaid would require to be registered, enrolled or recorded; and the registry hereby directed shall have the like effect to all intents and purposes as the registry, enrolment or recording of any such conveyance or assignment as last aforesaid would have had; and the title of any purchaser of any such property as last aforesaid for valuable consideration, or of any mortgagee thereof without fraud, who shall have duly registered, enrolled or recorded his purchase or mortgage deed previously to the registry hereby directed, shall not be invalidated by reason of such order absolute or appointment: provided always, that if the master shall by writing under his hand, direct that any of the said estate, effects, credits or rights of action shall not vest in the official manager by virtue of the appointment, it shall be lawful for the court or the master at any time afterwards by order to revoke, discharge or vary any such direction, and thereupon the estate, effects, credits or rights of action comprised in such direction shall, either wholly or to the extent to which the same shall be so discharged or varied, become and be vested in the official manager for the time being. *Ib.* 29.

And be it enacted, that when any order shall have been made as hereinbefore mentioned on petition, by direction of the Court of Bankruptcy, for winding up under this act the affairs of any company, all such estate and effects, rights and credits of the bankrupt company as shall for the time being be vested in the assignees in bankruptcy shall, upon and by virtue of the appointment of an official manager under this act, unless otherwise provided by the order absolute, become absolutely vested in such official manager, together with all such powers in and about the same as an official manager might exercise in any matter originally instituted under this act in which the company had not become bankrupt. *Ib.* s. 30.

And be it enacted, that until the issuing of any such general rules or orders as are by this act authorized to be made, the practice of the court with respect to receivers and managers of partnership estates shall, so far as practicable, and subject to the provisions of this act, and to any special orders or directions relative to the official manager, and his acts, duties and proceedings, to be made or given by the court or the master with respect to any particular company, (and which order or directions the court and the master are hereby respectively authorized to make and give), apply to every official manager under this act, and to his duties and proceedings *Ib.* s. 31.

credits of the company, to get in the assets (*l*), and to make out lists of all persons who appear

(*l*) And be it enacted, that the official manager shall proceed with all convenient speed, under the directions of the master, in the making up, continuing, completing, and rectifying the books of account of the company, and in providing and keeping such other books of account (if any) as shall be necessary for the showing the debts and credits of the company, including a ledger, which shall contain the separate accounts of the contributories (and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as hereby provided), and in balancing all such books and the accounts of the respective contributors of such company, in getting in, selling, and converting the estate and assets, and winding up the business and affairs of the same company, in paying the debts as herein provided, and in dividing and distributing the surplus assets of the company (whether existing at the time of the dissolution, or arising from subsequent calls or contributions, or otherwise,) amongst the parties entitled, and in bringing before the master for determination and settlement all questions necessary to be determined and settled in order to the winding up of the affairs of the company; and the official manager, with or without notice to any contributory, shall, without the necessity of any proposal in writing, take the directions of the master from time to time with reference to all proceedings necessary to be done or taken in order to the complete and effectual winding-up of the affairs of the company; and it shall be lawful for the master to give such directions accordingly. 11 & 12 Vict. c. 45, s. 34.

And be it enacted, that the official manager shall with all convenient speed after his appointment make out from the books of accounts and papers of the company a list of all debts and demands due or which may be claimed from the company, and shall make such observations with reference to such debts and demands, or any of them, and as to the amount thereof respectively, as he shall think proper to be made thereon, in order to assist the master in forming a judgment thereon, when any debt shall be claimed to be proved before the master in pursuance of the advertisement in that behalf hereinafter mentioned; and when any of such debts shall have been proved or claimed before the master as hereinafter mentioned the same shall be entered in a new list to be made by the official manager, so that the debts and demands allowed by the master shall be distinguishable from such of them as shall be disallowed, or shall be allowed only as claims; and in case any debts or demands which shall be disallowed, or allowed only as claims, shall be afterwards allowed by the master as having been duly proved, or shall be duly established by legal proceedings or otherwise, such changes and variations shall be made by the official manager in

liable to contribute to the debts of the company, which are settled by the Master, after hearing all such persons as either object to be put on the list, or, being placed there, contend (*m*) that other per-

such list or lists of debts as shall be required to be made in order that such list or lists may correctly represent the state and condition of the affairs of the company in regard to the debts and demands due or claimed from or against them; and in such list or lists the official manager, in cases where it shall be necessary or convenient for the purposes of the winding up, shall enter the dates or times at which such debts or demands, or any of them respectively, were contracted or became due, and shall enter all sums of money which shall have been paid in discharge or on account of such debts and demands, or any of them; and such lists respectively, and all changes and variations therein, shall be entered by the official manager in a book to be provided and kept by him: and such book shall from time to time, as occasion shall require, be inspected by the master. *Ib.* s. 71.

(*m*) And be it enacted, that the official manager shall make out a list of the members and other contributories of such company, together with their respective addresses, and the number of shares or extent of interest to be attributed to each, and such list shall as far as practicable distinguish the several classes of contributories, and such variations and additions shall afterwards be from time to time made therein and thereto as that the same shall, as far as may be, be a true and accurate list of such members and other contributories; and in case any of the contributories shall after the making of the order absolute assign or dispose of any share, right, title, or interest in the company, or the capital or profits thereof, it shall be lawful for the master, upon the application of the contributory making such assignment, or of the person in whose favour the same shall have been made, or of any contributory of the company, or of the official manager, to introduce into the list of contributories the name of the person to whom such assignment shall have been made, either by way of substitution for the name of the contributory making such assignment or conjunctively therewith: provided nevertheless, that no such assignment or disposal shall release or exonerate the party making the same from any liability as a contributory further or otherwise than he would be released or exonerated if the affairs of the company were not wound up under this act. 11 & 12 Vict. c. 45, s. 76.

And be it enacted, that the list of contributories so made out by the official manager shall be settled by the master, and previous notice of his being about to settle the same shall be given in the London Gazette, and otherwise as the master shall direct; and such list, and all variations therein and additions thereto, when respec-

sons ought to be also liable. All persons whose names are included in these lists the Master may

tively settled by the master, shall be entered by the official manager in a book which shall be from time to time inspected by the master, and certified by him by writing under his hand to be entered therein. *Ib.* s. 77.

And be it enacted, that notice in writing shall be given to every person included in or proposed to be specially excluded from the list of contributories, or in any variation therein or addition thereto, as aforesaid, before the same shall be settled by the master, thereby notifying that such person is included in or excluded from the list, and if included then in what character, and for what number of shares, and of what amount, or for what other interest such person is so included; and that, if no cause shall be shown to the contrary to the satisfaction of the master by a day to be fixed by the master, and to be specified in such notice, the list shall not, as to every person failing or neglecting to show cause within the time to be so fixed, be afterwards disputed, without leave of the court first obtained. *Ib.* s. 78.

And be it enacted, that so far as the master shall have settled such list of contributories, or any variation therein or addition thereto, every person included in such list, or in any addition thereto or variation therein, or specially excluded therefrom, shall, unless cause be duly shown by him to the contrary to the satisfaction of the master, be fully bound and concluded by the list so settled, or by any exclusion therefrom, and shall not be entitled to contest the same, without leave of the court first obtained for that purpose. *Ib.* s. 79.

And be it enacted, that after the master shall have commenced to settle the list of contributories no person shall be entitled to appear before him as a contributory of the company, unless his name shall be on the list: provided always, that any person, except such person as may have been previously specially excluded from such list, shall be at liberty from time to time to claim, by way of proposal before the master, that his name shall be inserted upon the list; and the master shall, upon consideration thereof, either admit or reject such claim, by writing under his hand. *Ib.* s. 80.

And be it enacted, that it shall be lawful for any person whose name shall stand upon the list of contributories to summon any other person whose name shall not be upon such list, and who shall not have been previously specially excluded therefrom, to appear before the master, at a day and time to be therein specified, to show cause why his name should not be included in or specially excluded from the list; and upon the return of such summons, or at any future time to be fixed by the master, he shall consider the liability or alleged liability or right of the party so summoned to be inserted in such list, and shall by writing under his hand declare whether such party shall or shall not be included in or excluded from the list. *Ib.* s. 81.

then compel to pay their equitable proportion of the sum necessary for the liquidation of demands against the company (*n*), the official manager pro-

(*n*) And be it enacted, that the monies and assets of the company, or such of them as shall for the time being be got in and realized, or any part thereof, shall with all convenient speed be paid and applied by the official manager, under the direction of the master, to be from time to time given under his hand, in or towards the satisfaction of the debts or of any of the debts of the company, in such manner, whether by way of dividend or otherwise, as the master shall direct. 11 & 12 Vict. c. 45, s. 82.

And be it enacted, that at any time before the whole of the assets of such company shall have been collected or converted, and if the assets remaining to be collected or converted shall not be capable of being immediately realized, although such assets may not appear to be insufficient, and also after the assets of the company shall have been wholly exhausted, it shall be lawful for the master from time to time to make calls on the contributories, or on such individual contributories or classes of contributories as he may think proper (but so far only as such contributories respectively shall be liable at law or in equity to pay the same), as well for raising such amount as may be necessary to pay the debts or liabilities, or any of the debts or liabilities of such company, or any part thereof, or the cost, charges and expenses of winding up the same, as also for the purpose of adjusting and settling the respective claims of contributories upon each other, or upon the company, whether such claims shall have arisen since or before the date of the petition for dissolution and winding up, or for winding up, as the case may be; and the amount to be raised by means of such calls, and also the residue of the assets and estate of the company after the payment of all debts and liabilities, costs, charges and expenses, shall be paid and distributed by the official manager, under the directions of the master, so and in such manner as shall (as far as possible) satisfy all such claims, and shall finally wind up and settle the affairs of the company. *Ib.* s. 83.

And be it enacted, that previously to the making of any call the master shall, in such manner as the court, by any general order or any special order in the matter, shall from time to time direct, and in default of and subject to any such direction then by advertisement in two successive numbers of the London Gazette, and otherwise as he shall think proper, give notice of a day, hour and place at which he will make such call, and of the proposed amount thereof; and all persons interested shall be entitled to attend at such day, hour and place, and to offer objections to or relating to any such call. *Ib.* s. 85.

And be it enacted, that, unless cause shall be shown to the contrary, to the satisfaction of the master, at the time and place appointed

ceeding ultimately, under his direction, to apply the funds realized in discharge of these claims.

for making such call, the master shall then make an order for such call, and for the payment to the official manager of the balance which shall be due from the respective contributories, after debiting them with the amount of such call, on or before a day and at a place to be therein fixed, such day not being earlier than three weeks from the date of the peremptory order. *Ib.* s. 86.

And be it enacted, that every such order shall be advertised once or oftener in the London Gazette, and a copy of such order shall be served on the respective contributories, and every contributory shall also be furnished with a statement of the balance of his account, after debiting the same with the amount chargeable against him in respect of such call: provided nevertheless, that the advertisement, or the first advertisement (if more than one), of such order shall not take place at a less period than ten days after the date thereof, or in case any appeal shall be made to the court against such order, then such advertisement or first advertisement shall not take place until after such appeal shall have been disposed of. *Ib.* s. 87.

And be it enacted, that it shall be lawful for the official manager, with the approbation of the master, from time to time to enforce payment of, give time, or compound or require to take any security for any balance or claim as against any of the contributories of the company, and also to abandon any such balance or claim where the contributory against whom the same is claimed shall die, or be found and adjudged bankrupt, or take the benefit of any act for the relief of insolvent debtors, or dwell or escape beyond seas, or be known to be insolvent or incapable of paying his debts, or in such other cases as the master shall think fit; and it shall not be necessary to include in any subsequent call any contributory against whom any balance or claim shall have been abandoned, but the whole amount of every subsequent call shall be apportioned among the other contributories; provided always, that nothing herein contained shall extend to discharge the estate of any such contributory so left out of any call from any claim which may exist against the same on behalf of the company or any other contributory thereof, but that it shall be lawful for the official manager to prove for the amount thereof in the matter of such bankruptcy or insolvency (if any), and to receive dividends thereon, or to proceed against such contributory for the same, whenever it may appear expedient so to do; and any monies so to be recovered shall be dealt with as part of the assets of the company, or otherwise as the master shall direct. *Ib.* s. 88.

And be it enacted, that in case any money shall be due from the estate of a deceased contributory whose executor or administrator shall not admit assets, it shall be lawful for the master to direct that any suit or action shall be brought or other steps taken for compel-

For all purposes connected with these proceedings, the production of books and papers, the compulsory attendance of witnesses, the examination of the parties, &c., ample powers are given to the Master (*o*), whose orders are valid without con-

ling payment of what shall be so due, and for obtaining, if necessary, an administration of the estate of such deceased contributory in or towards payment of his debts; and that any such suit or action shall and may be brought by the official manager by the style and designation aforesaid; and the production of the order or an office copy of the order for payment of any balance shall be sufficient evidence of the debt in respect of which such action or suit shall be brought as aforesaid. *Ib.* s. 89.

And be it enacted, that, as far as in the judgment of the master it shall be consistent with the interest of the company, the master shall cause the official manager to circulate and advertise in the London Gazette, or otherwise to give notice as the master shall direct, of all accounts and balance sheets and particulars, if any, of proceedings in and about the liquidation which it shall be expedient to make known to the contributories, or to the creditors of the company. *Ib.* s. 90.

And be it enacted, that so much of the said recited act as is contained in the section thereof numbered eighty-four in the copy of the said act printed by the Queen's printer shall be, and the same is hereby repealed; and in lieu thereof, that, when the master shall think proper to raise any money by means of a call, he shall make such call from time to time upon the contributories of the company, or any of them, appearing for the time being on the list of contributories, although it may then be under consideration, or uncertain, whether other persons ought or ought not to be included in the list; and in making any such call, it shall be lawful for the master to fix such an amount per share for the same as shall in his judgment be likely to supply and bring in the whole sum for the time being intended to be raised, after taking into consideration the probability that some of the contributories upon whom the said call shall be made should partly or wholly fail to pay their respective proportions of the same. 12 & 13 Vict. c. 108, s. 28.

(*o*) And be it enacted, that in order to facilitate the winding-up of the affairs of any company, and to determine and resolve any questions of law or of fact that may arise between such company and any of the contributories or creditors thereof, or between any two or more of the contributories, or between any contributory and any creditor, it shall be lawful for the master to direct that such parties as he shall in that behalf appoint shall proceed to try, in such one of her majesty's courts of law at Westminster or Dublin as the mas-

firmation (*p*), and declared to have the same effect as orders of the superior judges of the court (*q*). The Master may direct issues for the ascertaining doubtful facts, and send cases for the opinion of the courts of law (*r*), and in his discretion the costs of all proceedings before him lie. He has also the important power of appointing any one or more of those who appear before him as *contributories* to represent the interest of any class of contributories, thus doing away with those

ter shall think fit, any issues of fact, and to direct that any actions at law shall be brought and prosecuted, or shall proceed for the purpose of trying any mixed question of law and fact necessary or proper, in the opinion of the master, to be determined in order to the complete winding-up of the affairs of such company; and the said master shall settle all such issues, and it shall be lawful for him to give such directions as he shall think right or expedient with reference thereto, or to any such actions as aforesaid; and such issues shall be accordingly tried: provided nevertheless, that no such issue or action shall be directed with reference to any questions between the company or any contributory thereof, and any creditor thereof, without the consent of such creditor. 11 & 12 Vict. c. 45, s. 91.

And be it enacted, that the master shall, subject to such appeal as herein provided, adjudicate upon and determine any matter in contest between contributories or classes of contributories, or between the company and any individual contributories or classes of contributories, which may be necessary or proper to be determined in order to the complete winding-up of the affairs of the company. *Ib.* 92.

(*p*) 11 & 12 Vict. c. 45, s. 93.

(*q*) *Ib.* s. 95.

(*r*) And be it enacted, that it shall be lawful for the master, in directing any issue or question of fact to be decided by a jury under the powers of the said act, to determine whether such issue or question shall be decided by a common or by a special jury; and that it shall also be lawful for the master to direct a new trial of any such issue or question; and also that it shall be lawful for the master to require any contributories or alleged contributories to interplead before him in any question of liability or other matter in difference between such contributories or alleged contributories in which the company is interested, or which is necessary to be determined in order to the complete winding up thereof, and thereupon to decide the same. 12 & 13 Vict. c. 108, s. 31.

formal difficulties as to parties by which the administration of substantial justice has so often been impeded in equity.

Grounds for Interference.—In cases of companies coming within the act, it is not at all essential that there should be outstanding debts due from the association. Thus in a recent case the act was held to apply to a banking company which had ceased to carry on business for six years before the act passed, and had no outstanding debts (*s*), even though the petition to wind up was presented by one of the directors, against whom a suit in chancery was pending, seeking to make him personally liable (*t*).

Proceedings under the Winding-up Acts may be resorted to even when previous proceedings have been taken with the object contemplated by the act; *e. g.*, a suit in equity, instituted for the purpose of making the directors personally liable for certain losses, but not asking for a dissolution (*u*); or where the adjustment and settlement of the affairs of a company had been referred to an arbitrator, who had made his award, but it was not taken up (*x*).

(*s*) Ex parte Walker, re Marylebone Bank, *infra*; Re London and Westminster Life Assurance Company, 13 Jur. 721.

(*t*) Re Marylebone Bank, 18 L. J. (N. S.), Ch. 81; 1 Hall & T. 100; 1 De Gex & Smale, 585.

(*u*) Ex parte Troutbeck, re Marylebone Bank, 1 Hall & Twells, 100; 1 De Gex & S. 585.

(*x*) Re Lancaster and Newcastle Railway Company, 5 Railway Cases, 632.

The act applies as well where only a portion of the shareholders are sought to be made liable and to contribute, as where the object is to make a portion of the shareholders, *e. g.* the provisional committee of an abortive scheme, settle their accounts among themselves (*y*).

In applications under the act, the Court of Chancery will take into consideration the particular circumstances of each case; for the provisions of the act are not allowed to be used for the purpose of settling controverted points between individual shareholders and the company; and if the circumstances do not appear to render the interference of the Court necessary, a petition for the purpose will be dismissed (*z*). Thus where the affairs of a company had been adjusted by amicable arrangement, and sums of money returned by way of final dividends to the shareholders, the Court has refused, after the expiration of two years, to interfere at the instance of an individual shareholder who failed to prove the discovery of any fact of which he had not notice before (*a*); and the same course was adopted in a case where there were none of the usual tests of insolvency provided by the act, or proof of any

(*y*) Ex parte Hollingsworth, re Ipswich and Southampton Railway Company, 5 Railway Cases, 623.

(*z*) Ex parte Pocock, re London and Manchester Railway, 5 Railway Cases, 607; Re Wheal Lovell Company, 1 Macnaghten & G. 1; 1 Hall & Twells, 125; 18 Law J. 139, Ch.

(*a*) Ex parte Murrell, Re London and South-Essex Railway, 5 Railway Cases, 612; 18 Law J. (N.S.) Ch. 260.

act amounting to a dissolution, and no information could be obtained without looking into the accounts (*b*); and where a company had instigated one of its creditors to recover from a defaulting shareholder a debt for which the company was liable, a petition for *winding up*, presented by a shareholder, was dismissed (*c*).

Who are Contributories.—It has been held right to include in the list of contributories the name of a father who entered into a covenant that his son, an infant shareholder in a joint stock company, should perform the covenants in the deed of settlement (*d*); the name of an executrix of a deceased shareholder (*e*); of the husband of a female, who held shares before marriage, though

(*b*) Ex parte Spackman in re Agriculturist Company, 1 De Gex & Smale, 599; 1 H. & T. 229; 18 Law J. (N.S.) Ch. 261; 1 M'N. & G. 170.

(*c*) Re Wheal Lovell Mining Company, *sup.*

(*d*) Reaveley's case, 1 De Gex & Smale, 550; 1 Hall & Twells, 118; 18 Law J. (N. S.) Ch. 110. In Fenwick's case, 1 De Gex & Smale, 557, it was held, that a father who purchased shares on behalf of infants, but allowed them to stand in the name of an uncle as the trustee, could not be placed on the list, as the uncle was the proper party to be treated as contributory.

(*e*) Ex parte Thomas, re North of England, &c., 1 De Gex & Smale, 579; 18 Law J. (N.S.) Ch. 249. In Glaholme's case, 1 De Gex & S. 583; 1 H. & T. 123, it was held, that the name of a party who had received dividends on shares of a deceased brother, without having administered, ought not to be inserted in the list of contributors without qualification; and in Armstrong's case, 1 De Gex & S. 565, the executor of a deceased shareholder, who sold some of the shares, but did not give the notice required by the deed of settlement to make himself a shareholder as to the rest, was held not to be a contributory. See also Ex parte Pim, re St. George Steam Packet Company, 18 Law J. (N. S.) Ch. 258, 259; Re Liverpool Timber Company, 1 De Gex & S. 570, n.

the husband had never interfered with respect to them (*f*); of a party to whom shares had been transferred, and who, although he did not comply with the formalities required by the deed of settlement, had availed himself of the privileges of a shareholder (*g*). The act also extends to the case of a party allowing his name to be used as a holder of shares on a secret trust for one of the managers, and afterwards formally transferring them into the name of such manager (*h*); and even a trustee to whom shares have been assigned on the marriage of the holder, though the formalities prescribed to be pursued in the transfer have not been observed, but have been waived (*i*).

It seems to be *now* settled that the liability under the act is the liability of contributories *inter se*, and not as regards third parties (*k*).

The Master is called upon under the act to make out a list of contributories, that is to say, a list of all persons who may be liable to contribute to the

(*f*) Re North of England Bank, Burlingson's case, 18 Law J. (N. S.) Ch. 250; Sadler's case, *ib.*, 251; but the husband of a lady who had purchased shares with sums settled to her separate use was held not to be a contributory, though he had received dividends on the shares on her behalf, Angas's case, Re North of England Bank, 1 De Gex & Smale, 560, recognised by Court of Exchequer, in Ness *v.* Angas and Ness *v.* Armstrong, 13 Jurist, 874.

(*g*) Re St. George's Steam Packet Company, Maguire's case, 18 Law J. (N. S.) Ch. 256; 13 Jurist, 673.

(*h*) Re Marylebone Bank, Davidson's case, 18 Law J. (N. S.) Ch. 254; see Ex parte Pim, *supra*.

(*i*) Ex parte Hale, re North of England Bank, 5 Railway Cases, 624, 18 Law J. (N. S.) Ch. 252.

(*k*) Fenwick's case, re North of England B. Co., 1 De Gex & S. 557; Angas's case, *ib.* 560.

exigencies of the company, and to make good the funds of the company. It is quite clear, therefore, that he is bound to include all those who may be liable under any circumstances, although as between individual shareholders there may be an equity protecting one from liability to another (*l*).

Order of Liability.—The 84th section says the list is to consist not only of those who are primarily liable, but of those also who are liable in the second, third, or fourth degree. When the Master has got before him all those who are liable to contribute in any degree, then he has to decide in what order they are liable. It has been held, therefore, that the name of a party who has transferred his shares within three years may be included (*m*); and even that of a shareholder, who, in pursuance of a resolution passed at an extraordinary general meeting of an unincorporated company, sold his shares to the directors upon the terms that he should withdraw from the company and be no longer liable to any debts of the company (*n*); but in these cases the shareholder should be described as a contributory *under qualification*, e. g.

(*l*) Per Lord Chancellor Cottenham in Ex parte Morgan, re Vale of Neath Brewery, 1 Mac. & G. 234; 1 De Gex & S. 774; 1 Hall & Twells, 320.

(*m*) Ex parte Hawthorn, in re North of England Joint Stock Banking Company, 1 Hall & Twells, 225; 1 De Gex & Smale, 571.

(*n*) Ex parte Morgan, in re Vale of Neath Brewery Company, 1 Hall & Twells, 320; 1 Macnaghten & Gordon, 225; 1 De Gex & Smale, 750; 18 Law Journ (N. S.) Ch. 265; see also Chartre's case, 1 De Gex & S. 581.

as liable only in a certain event, or for debts incurred before or after a certain period (*p*).

If the notice treat a party as contributory, merely in a representative character, he cannot afterwards be treated as subject to further liability (*q*).

(*p*) See Re North of England Joint Stock Banking Company, Sanderson's case, 18 Law J. (N. S.) Ch. 248.

(*q*) Ex parte Glaholm, re North of England Bank, 1 Hall & Twells, 121; 1 De Gex & S. 583.

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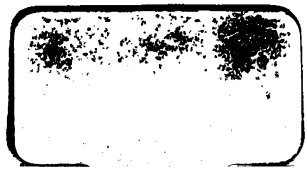

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